



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

TO: Railway Systems Suppliers, Inc. (“RSSI”)
FROM: TGA Association Management Solutions, LLC (“TGA AMS”)
RE: Monthly Legislative Report for December 2021
DATE: December 31, 2021

KEY UPDATES

- Build Back Better Act (aka budget reconciliation package) did not pass the Senate, will be revised and reconsidered in Senate in January
- Federal debt ceiling and government funding/Appropriations to fund government for remainder of FY 2022 (Oct 1, 2021—Sept 30, 2022) was extended via Continuing Resolution (CR) until February 18, 2022
- FRA Fed-State Partnership for State of Good Repair grants for FY2021 [were opened](#) on December 10
- Karen Hedlund was confirmed to the Surface Transportation Board (STB) on December 16

BUILD BACK BETTER (BBB) ACT/BUDGET RECONCILIATION

- Budget reconciliation is a process through which only requires 50+1 votes in the Senate that Democrats are attempting to push many social spending programs
- Roughly \$1.75 trillion partisan social spending bill, the Build Back Better Act (BBB) was initially paired with the IJA, but now stands alone and still needs to be passed by the Senate
 - House passed the bill on November 19 on a vote of 220 to 213 after the [CBO estimates](#) that enacting the bill would result in a net increase in the deficit totaling \$367 billion over the 2022-2031 period, not counting any additional revenue that may be generated by additional funding for tax enforcement
 - House-passed bill includes \$10 billion for high-speed rail projects
 - Senate has indicated it will take up the bill again in January 2022 but there will need to be additional changes in order to get enough votes for the bill to pass

FY2022 APPROPRIATIONS

- On December 3, a continuing resolution (CR) was signed into law until February 18, 2022
 - The CR will continue to fund the government through February 18, 2022 until Congress can assemble an agreed-to bipartisan package (Omnibus or several Minibuses) to fully fund FY 2022. A CR was necessary because none of the 12 annual appropriations bills have been enacted
- **IMPORTANT – key increases in federal transportation funding to be enacted in the IJA are at risk unless a FY 2022 US DOT appropriations bill is enacted**
 - If a full-year FY 2022 CR would happen to be enacted it would restrict US DOT funding to FY 2021 spending (a CR typically limits funding to the previous year’s level) thereby preventing some of the highway and public transportation increases provided by the IJA
- See Appropriations table below for more details:

	FY21 Actual	FY22 Biden Budget Request	FY22 House	FY Senate
TIGER/BUILD/RAISE	\$1b	\$1b	\$1.2b	\$1.09b
FRA including Amtrak	\$2b	\$2.7b	\$2.7b	\$2.7b
<i>CRISI</i>	\$375m	\$375m	\$500m	\$522.8m
<i>Fed-State SOGR Partnership</i>	\$200m	\$0	\$0	\$220m
<i>PRIME grants</i>	\$0	\$625m	\$625m	\$0
<i>Rail Restoration/Enhancement</i>	\$4.7m	\$0	\$0	\$2m
<i>MagLev</i>	\$2m	\$0	\$5m	\$0
RRIF CRP Subsidy	\$0	\$0	\$0	\$10m
Section 130 grade crossing set-aside within highway contract authority	\$245m	\$245m	\$245m	\$245m
FTA New Starts	\$2.014b	\$2.5b	\$2.5b	\$2.24b
FTA Formula funds	\$10.8b	\$10.8b	\$12.8b	\$10.8b
WMATA Special Appropriation	\$150m	\$150m	\$150m	\$150m

SURFACE TRANSPORTATION BOARD

- On December 16, 2021, Karen Hedlund was confirmed by the Senate as STB Commissioner replacing Ann Begeman. Current STB members:
 - **Chairman Martin Oberman (Democrat):** Former Chairman of Metra in Chicago. Named STB Chairman at the beginning of the Biden administration
 - **Robert Primus (Democrat):** Career Democratic staffer on Capitol Hill, formerly served as Chief of Staff to Rep. Nanette Barragan (D-CA), Rep. Michael Capuano (D-MA), and Rep. Tony Cardenas (D-CA)
 - **Karen Hedlund (Democrat):** former Obama FRA Deputy Administrator
 - **Vice Chair Patrick Fuchs (Republican):** Former Senate Commerce Committee staffer under Chairman John Thune (R-SD) who is well versed on regulatory issues affecting the railroad industry. He has been very friendly to freight railroads and we know where he stands on the issues
 - **Michelle Schultz (Republican):** Previously spent 14 year in leadership roles with SEPTA and had a career in law before that
- The STB has broad regulatory oversight of railroads and is a key agency to monitor. At the beginning of January, after being confirmed easily by the Senate, STB nominees Michelle Schultz and Robert Primus started their five-year terms on the STB as board members. It represents the first time the board has had its full complement of five members since the 2015 STB Reauthorization Act expanded the board from three to five
- The most high-profile item before the STB this year has been the potential merger between Canadian National/Canadian Pacific and Kansas City Southern, but the board is also still considering the CSX-Pan Am merger (comments due January 2022, decision expected April 2022), and several major rules with huge implications for the railroads: 1) forced access/reciprocal switching and 2) NPRMs on shipper/railroad rate disputes

INFRASTRUCTURE BILL (IIJA)/SURFACE TRANSPORTATION REAUTHORIZATION

- \$1.2 trillion five-year bill was signed into law on November 15
 - Bill includes \$550 billion in new spending
 - \$66 billion for passenger and freight rail

- \$36B Fed-State Partnership for Intercity Passenger Rail grants
 - \$16B Amtrak National Network
 - \$6B Amtrak NEC
 - \$5B FRA CRISI grants
 - \$3B new FRA rail crossing elimination program
 - \$39 billion for transit
 - \$19.15B increased contract authority for formula funding
 - \$4.75B State of Good Repair
 - \$8B FTA CIG/New Starts
- Other key grant programs in the bill
 - New Megaprojects grant program (freight and passenger rail eligible) funded at \$10B
 - USDOT RAISE (formerly BUILD or TIGER grants) funded at \$7.5B
 - USDOT INFRA grants funded at \$3.2B
 - \$50M/year to subsidize credit risk premium for RRIF loans
- ***Key programs of importance to RSSI**
 - New rail crossing elimination grant program funded at \$3B
 - Section 130 funded at \$245M/year from FY 2022-2026 with several key policy changes:
 - The bill removes the requirement that at least half of the funds set aside for the Section 130 program must be for the installation of protective devices at railway-highway crossings
 - The bill increases the Federal share for projects funded under the Section 130 program from 90 to 100 percent, as well as clarifies that the replacement of functionally obsolete warning devices is an eligible expense
 - The bill also increases the amount of state incentive payment at-grade crossing closures from \$7,500 to \$100,000 and increases the set-aside for compilation and analysis of data from 2 percent up to 8 percent
 - Regarding eligibility, the bill emphasizes eligibility for projects to reduce pedestrian fatalities and injuries from trespassing at grade crossings, and states that it is the sense of Congress that the DOT should, where feasible, coordinate efforts to prevent or reduce trespasser deaths along railroad rights-of-way and at or near railway highway crossings
 - This section also requires the Comptroller General of the United States to submit a report that includes an analysis of the effectiveness of the Section 130 program as a set-aside within HSIP
 - FRA CRISI grants funded at \$5B
 - Expands eligibility to include rehabilitating, remanufacturing, procuring, or overhauling locomotives that result in a significant reduction in emissions; researching, developing, and testing innovative rail technology; and developing and implementing measures to prevent trespassing and reduce injuries and fatalities
- Other key provisions:
 - Codifies the One Federal Decision executive order which streamlines the permitting process by consolidating decision-making processes and expediting deadlines.
 - FRA Railroad Research and Development program funded an average of \$45 million per Fiscal Year
 - Including up to \$4.5 million per FY for grants to establish and maintain a Center of Excellence to advance the safety, efficiency, and reliability of rail

- Includes a Highway Cost Allocation Study, the first since 1997. This study will help Congress better ensure different highway users, including commercial motor vehicles, cover their fair share of costs to maintain our nation’s roads and bridges
- Includes National Motor Vehicle Per-Mile User Fee (VMT) Pilot program to demonstrate a national VMT, including for commercial motor vehicles, to restore and maintain long-term solvency of the Highway Trust Fund
- Establishes an FRA blocked crossings portal pilot program
- What is notably NOT in the bill
 - No changes were made to the federal truck size or weights
 - Minimum crew size mandates
 - LNG by rail prohibition
 - Restrictive labor provisions
 - Yardmaster HOS

There is a lot of other non-rail related transportation and infrastructure funding included in the bill. See below for some helpful summaries of those other programs and provisions

White House Fact Sheet (NEW)	USDOT State Fact Sheets (NEW)
AASHTO IIJA Summary 9 15 2021	APTA IIJA Passenger Rail Investment
ARTBA IIJA Summary 8 2 2021	FTA Key Priorities
IIJA Summary	CBO Score of IIJA
National Association of Regional Councils	Dept. of Energy IIJA Fact Sheet
National Association of Counties NACo	T&I Links to Excel Apportionment Charts
APTA IIJA Public Transportation Investment	AASHTO Implementation Outline for IIJA

CONGRESSIONAL HEARINGS

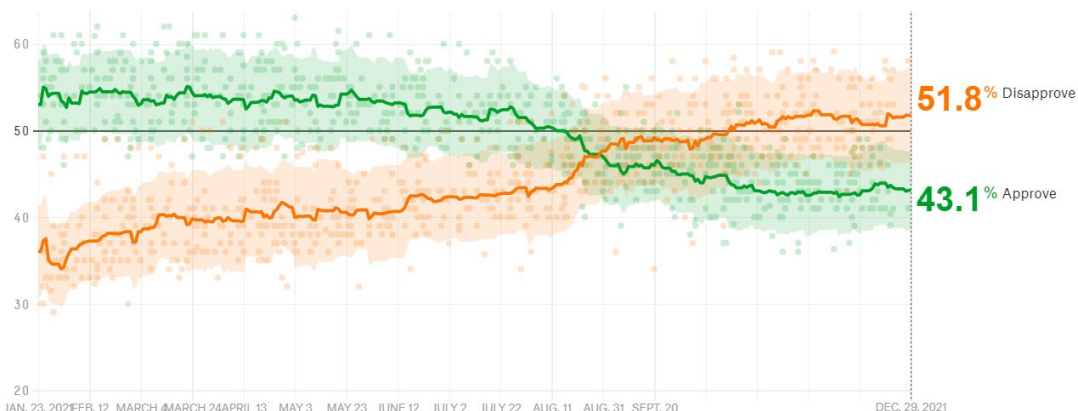
- December 9, 2021. The House Committee on Transportation and Infrastructure held a hearing to discuss and receive testimony on, “Leveraging IIJA: Plans for Expanding Intercity Passenger Rail.” [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**
- December 8, 2021. The House Committee on Transportation and Infrastructure held a hearing to discuss and receive testimony on, “Promoting Economic and Community Redevelopment and Environmental Justice in the Revitalization and Reuse of Contaminated Properties.” [Committee Link and Testimony](#)
- December 2, 2021. The House Committee on Transportation and Infrastructure held the second of two Full Committee hearings on cybersecurity of the nation’s infrastructure. The hearing entitled, “The Evolving Cybersecurity Landscape: Federal Perspectives on Securing the Nation's Infrastructure.” The first hearing was held on November 4, 2021 and featured testimony from industry stakeholders and cybersecurity experts. [Committee Link and Testimony](#)
- December 1, 2021. Peter DeFazio, Chairman of the House Committee on Transportation and Infrastructure **announced** that he will not seek re-election in 2022. DeFazio served 36 years in the House of Representatives, the longest serving House Member from Oregon and the 65th-longest serving member of the House in U.S. history. District of Columbia Delegate Eleanor Holms Norton (D-DC) and Congressman Rick Larsen (D-WA) both declared their candidacy for the Chairmanship of the Committee. (Despite lacking full voting privileges on the floor of the House of Representatives, delegates are voting members in Congressional committees)

U.S. DEPARTMENT OF TRANSPORTATION/FRA

- December 13, 2021. US DOT is planning to issue a [Notice of Proposed Rule Making](#) (NPRM) sometime February 2022 that will address the rule on minimum staffing for train crews, i.e. the potential safety impact of one-person train operations
- December 10, 2021. The Federal Railroad Administration (FRA) issued a Notice of Funding Opportunity (NOFO) making available \$198 million under the [FY 2021 Federal-State Partnership for State of Good Repair Program](#) (Partnership Program) and [here](#) and [here](#). The purpose of the Partnership Program is to fund projects within the US to repair, replace, or rehabilitate Qualified Railroad Assets to reduce the state of good repair backlog and improve Intercity Passenger Rail performance. The Partnership Program is intended to benefit both railroad assets in the Northeast Corridor (NEC) and public or Amtrak-owned or controlled infrastructure, equipment, and facilities located in other areas of the country. The notice expands the definition of Capital Project, making expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way) of a Capital Project eligible for funding independently or in conjunction with proposed funding for construction or acquisition. There are no predetermined minimum or maximum dollar thresholds for awards. The Federal share of total costs for Partnership Program projects is not to exceed 80 percent. FRA will provide selection preference to applications where the proposed Federal share of total project costs is 50 percent or less. **Applications for funding are due no later than 5:00 p.m. ET on March 7, 2022**
- December 7, 2021. The Congressional Research Service issued a report entitled, "[Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act \(P.L. 117-58\)](#)"
- December 6, 2021. The Federal Transit Administration (FTA) [posted](#) a series of Fact Sheets regarding the Bipartisan Infrastructure Law or the (IIJA)

POLITICAL ENVIRONMENT

- President Biden's approval has fallen significantly since August



- Current split in the 117th Congress
Senate: **50 Democrats** – **50 Republicans** (VP Harris the tiebreaker)
House: **221 Democrats** – **213 Republicans**
- As we near 2022, Republicans feel good about their odds to retake Congressional majorities next year and the polls are beginning to reflect that
- Republicans scored first electoral win of Biden admin with Youngkin's defeat of McAuliffe in Virginia Governor's race
- Wave of Democratic retirements expected to continue (already 23 House Dems [have announced](#) their retirement)
- Maps for the next decade are being drafted across the country by legislature or commission