



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

TO: Railway Systems Suppliers, Inc. (“RSSI”)
FROM: TGA Association Management Solutions, LLC (“TGA AMS”)
RE: Monthly Legislative Report for March 2022
DATE: April 1, 2022

KEY UPDATES

- Congress passed FY22 Omnibus Appropriations bill to fully fund government through the remainder of the fiscal year (Sept 30, 2022)
- [Railroad Day on Capitol Hill](#) was held virtually on March 9-10
- Federal discretionary grants
 - [FRA Federal-State Partnership for State of Good Repair grants](#) were due March 7
 - USDOT RAISE grants are due on April 14
 - USDOT released combined NOFO for INFRA, Megaprojects and Rural Surface Transportation grants, due May 23
- President Biden delivered his first State of the Union Address on March 1, and submitted his budget for FY2023 on March 28
- STB held reciprocal switching public hearings on March 15-16

FY2022 APPROPRIATIONS

- On March 15, 2022, President Biden signed the FY 22 omnibus appropriations bill into law
 - The bill funds the government through September 30, 2022 and sets in motion many of the increases provided by the IIJA
- See Appropriations table below for more details:

| | FY22 House | FY22 Senate | Omni FY22 | IIJA FY22 | Total FY22 |
|--------------------------------------|------------|-------------|-----------|-----------|------------|
| TIGER/BUILD/RAISE | \$1.2b | \$1.09b | \$775m | \$1.5b | \$2.275b |
| FRA including Amtrak | \$2.7b | \$2.7b | \$2.33b | \$4.4b | \$6.73b |
| <i>CRISI</i> | \$500m | \$522.8m | \$625m | \$1b | \$1.625b |
| <i>Fed-State SOGR Partnership</i> | \$0 | \$220m | \$100m | \$7.2b | \$7.3b |
| <i>PRIME grants</i> | \$625m | \$0 | \$0 | \$0 | \$0 |
| <i>Rail Restoration/Enhancement</i> | \$0 | \$2m | \$0 | \$50m | \$50m |
| <i>MagLev</i> | \$5m | \$0 | \$0 | \$0 | \$0 |
| RRIF CRP Subsidy | \$0 | \$10m | \$0 | \$50m | \$50m |
| Section 130 grade crossing set-aside | \$245m | \$245m | - | \$245m | \$245m |
| <i>Grade crossing elimination</i> | | | - | \$600m | \$600m |
| FTA New Starts | \$2.5b | \$2.25b | \$2.25b | \$1.6b | \$3.85b |
| FTA Formula funds | \$12.8b | \$10.8b | - | \$13.355b | \$13.355b |
| WMATA Special Appropriation | \$150m | \$150m | \$150m | - | \$150m |

FY2023 APPROPRIATIONS

- President Biden submitted his FY2023 budget request to Congress on March 28
 - House and Senate Appropriations Committees will now begin their annual appropriations processes

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 passed by the House on November 19, 2021 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
- Negotiations between the White House and the Senate have broken down and President Biden has indicated that he will likely have to break-up the BBB bill in order to pass a scaled-down version. More spending during high inflation remains among the many concerns of pivotal swing vote Senator Joe Manchin (D-WV). The President has emphasized passing individual elements such as components to lower prescription drug prices and to offer healthcare and childcare subsidies. There is new emphasis from the Biden Administration on “selling” the social package by reducing the deficit (via tax increases and by paring-back some spending programs) as a means to appease Senator Manchin. Meanwhile, House Speaker Nancy Pelosi (D-CA) also intimated at an infrastructure event that Congress may take a second shot at passing the social spending bill

SURFACE TRANSPORTATION BOARD

- 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 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

- The STB held a [Public Meeting](#) on March 15-16 concerning the forced access/reciprocal switching regulations
 - [AAR statement opposing](#) this effort
 - See the US Department of Justice comments on reciprocal switching [here](#) and other comments [here](#) (type in EP 711 on Docket Number box)
 - Also, see Railway Age article, “[A Primer on Reciprocal Switching.](#)”
 - On March 23, the STB issued a decision allowing supplemental written comments and extending the ex parte communications period in the Reciprocal Switching proceeding. Following the March 15/16 hearing, the [STB decided to allow interested persons to file supplemental written comments](#) limited to issues raised at the hearing or in written materials submitted in response to the Board’s December 28, 2021 notice. **Supplemental written comments are due by April 4, 2022. The period for ex parte communications in this proceeding will close on April 22, 2022.**
- Regarding CP-KCS, on March 16 the STB noted that CP submitted 2019 baseline GT/M data for CP and KCS lines that is different from data in the Master Segment Table that was submitted. And on Feb 28, CN formally requested, via a [Responsive Application](#), to the STB to divest the parallel Springfield Line to CN’s as a condition of any approval of the proposed CP-KCS merger. CN argued that, “Allowing CP to consolidate control over two routes between Kansas City, on the one hand, and Chicago, Detroit, and Eastern Canada, on the other hand, would diminish competitive alternatives for rail customers—particularly because the CP-KCS application makes clear that CP will favor its existing Chicago-Kansas City route over potential routings involving the parallel Springfield Line.” CN has also intimated that it will invest in the creation of the Kansas City Speedway, if granted control over the line, bringing significant environmental benefits by removing 80,000 trucks a year from the road

INFRASTRUCTURE BILL (IIJA)/BIPARTISAN INFRASTRUCTURE LAW (BIL)

See links below for some helpful summaries of programs and provisions contained in the IIJA/BIL:

| | |
|--|---|
| Section 130 program BIL fact sheet (NEW) | Brookings Online Hub |
| CRS Report on FHWA programs in IIJA | CRS Report on passenger rail programs in IIJA |
| White House Guidebook | Updated WH Fact Sheet |
| White House Fact Sheet | USDOT State Fact Sheets |
| 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 |

- As a reminder, \$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

CONGRESSIONAL HEARINGS

- March 15, 2022. The Senate Committee on Banking, Housing, and Urban Affairs held a hearing to discuss and receive testimony on, “Advancing Public Transportation under the Bipartisan Infrastructure Law.” [Committee Link and Testimony](#)
- March 8, 2022. The House Committee on Transportation and Infrastructure held a hearing titled, “Stakeholder Views on Surface Transportation Board Reauthorization” [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**
- March 2, 2022. The Senate Environment & Public Works Committee held a hearing titled, “Implementation of the Infrastructure Investment and Jobs Act by the U.S. Department of Transportation” with USDOT Secretary Pete Buttigieg. [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**

U.S. DEPARTMENT OF TRANSPORTATION/FRA

- March 23, 2022. The US DOT issued a Notice of Funding Opportunity (NOFO) making available \$2.85 billion under the [Multimodal Project Discretionary Grant Opportunity \(MPDG\) Program](#). The Department’s NOFO is a combination of three funding opportunities: the [National Infrastructure Project Assistance Grants Program \(Mega\) - \\$1 billion available](#), the [Nationally Significant Multimodal Freight and Highways Projects Grants Program \(INFRA\) - \\$1.55 billion available](#), and the [Rural Surface Transportation Grant Program \(Rural\) - \\$300 million available](#). In addition to the FY 2022 funds, amounts from prior year INFRA authorizations, presently estimated at up to \$150 million, may be made available and awarded under this solicitation. While applicants can choose to apply via the “Multimodal Project Discretionary Grant Common Application” for only one grant program, the combined solicitation allows applicants to apply for two, or all three of these funding opportunities by submitting only one application. In fact, applicants are encouraged to apply for multiple programs, to maximize their potential of receiving Federal support. Funds for the INFRA, Mega, and Rural funding opportunities will be awarded on a competitive basis for surface transportation infrastructure projects – including highway and bridge, intercity passenger rail, railway-highway grade crossing or separation, wildlife crossing, public transportation, marine highway, and freight projects, or groups of such projects – with significant national or regional impact, or to improve and expand the surface transportation infrastructure in rural areas. **Applications must be submitted by 11:59 p.m. ET on May 23, 2022.**
- March 22, 2022. The US DOT amended the FY 2022 RAISE Notice of Funding Opportunity (NOFO). On March 15, 2022, the Consolidated Appropriations Act, 2022 appropriated an additional \$775 million for the FY 2022 RAISE Grant Program. Therefore, a total of \$2.275 billion in funding is now available for the FY 2022 RAISE Grant Program. Applicants should note that the two funding streams (BIL funding and FY 2022 Appropriations Act funding) have slightly different funding restrictions and requirements that may affect competitiveness. An

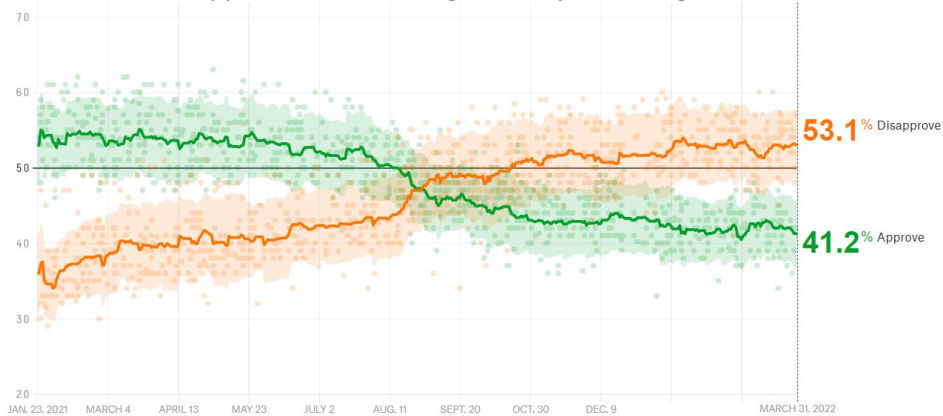
Amendment Summary is provided [here](#) and [here](#). The application due date remains unchanged as April 14, 2022 at 5:00 pm ET.

- [March 17, 2022](#). The Illinois Commerce Commission (ICC) approved its “[FY 2023 – 2027 Crossing Safety Improvement Program](#).” The Five-Year plan outlines safety improvements at highway-rail grade crossings and bridges located on local roads and streets throughout the State of Illinois. Appendix 1 (page 17) lists the **FY 2023 projects by County, City and DOT number**, Appendix 2 (page 18) lists **FY 2024-2037 projects by County, City and DOT number**, and Appendix 3 (page 26) lists **FY 2022 projects by County, City and DOT number**. *[As of February 1, 2022, there were 7,550 public highway-rail grade crossings in Illinois, of which 746 are on state roads, and 6,804 are on local roads. There are 2,670 public highway-rail grade-separated crossings (bridges) in the state. Nationally, Illinois is second only to Texas in the total number of highway-rail crossings.]*
- [March 16, 2022](#). The National Transportation Safety Board (NTSB) issued its “[Strategic Plan Fiscal Year 2022-2026](#).” The National Transportation Safety Board (NTSB) is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation—railroad, highway, marine, and pipeline. The Board’s plan is a roadmap designed to guide the agency over the next five years and build upon the FY 2020-2024 strategic plan.
- [March 14, 2022](#). The Federal Transit Administration (FTA) is [inviting public comment](#) and [here](#) on initial guidance proposals to implement changes made to the Capital Investment Grants (CIG) program by the Infrastructure Investment Jobs Act (IIJA). **Comments are due by April 14, 2022.**
- [March 10, 2022](#). Jennifer Mitchell, currently the director of the Virginia Department of Rail and Public Transportation, will step into the role of FRA deputy administrator next month. The deputy position at FRA, which does not require Senate confirmation.
- [March 9, 2022](#). The Federal Railroad Administration published a [Federal Register Notice](#) on February 7, 2022 seeking comments on the Corridor Identification and Development Program (the Program). **Written comments were due on March 9, 2022.** The Program is to Create a foundational framework for identifying and developing new or improved intercity passenger services. The Program is to solicit proposals for implementing new or improving existing intercity passenger rail service and to establish a prioritized “pipeline” of projects that may be implemented with funding provided under FRA’s (and potentially other Federal) capital investment financial assistance programs. Eligibility includes both short-distance (<750 miles) services, along with increasing the frequency of long-distance service, and restoring service over any route formerly operated by Amtrak. By May 14, 2022, the FRA is to issue a formal document “establishing” the Program, providing a general description of how FRA intends for the Program to function. Noteworthy written comments include the following: [Metra, CA Intercity Passenger Rail Joint Powers Authorities, Transbay Joint Powers Authority and Caltrain](#), and [CA Delegation Ltr. Ami Bera, Sen. Feinstein and Padilla et al.](#) View other comments [here](#). See AASHTO Comments [here](#).
- [March 4, 2022](#). The Federal Railroad Administration (FRA) issued a [Notice of Proposed Guidance](#) for its grantees on protective arrangements that are required to protect employees impacted by certain projects financed by the Federal Government. The protections provide that a railroad employee who is adversely affected by a project receiving certain financing from the Federal Government is entitled to receive a displacement allowance, and/or a dismissal allowance, among other benefits. Many of FRA’s current discretionary grant programs, including the [Consolidated Rail Infrastructure and Safety Improvements Program](#) and the [Federal-State Partnership for State of Good Repair Program](#), are subject to the grant conditions. FRA’s grants do not typically cause an adverse impact to railroad employees; however, once final, FRA intends to include the FRA Guidance as an appendix to all new grant and cooperative

agreements. **Written comments on this proposed guidance must be received on or before April 18, 2022.**

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: **222 Democrats** – **210 Republicans**
- As we near 2022 elections, 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
 - The first round of primary elections across the country are quickly approaching this spring/summer
- Wave of Democratic retirements expected to continue (already 31 House Dems [have announced](#) their retirement)
- Maps for the next decade are being approved across the country by legislature or commission in preparation for upcoming primary elections