



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

TO: Railway Systems Suppliers, Inc. (“RSSI”)
FROM: TGA Association Management Solutions, LLC (“TGA AMS”)
RE: Monthly Legislative Report for April 2022
DATE: May 2, 2022

KEY UPDATES

- FY2023 Transportation Appropriations process kicked off (which funds programs for next fiscal year beginning October 1, 2022)
- Federal discretionary grants:
 - USDOT RAISE grants were due on April 14
 - USDOT released combined NOFO for INFRA, Megaprojects and Rural Surface Transportation grants, due May 23
 - FRA CRISI grant awards expected later in May
- STB approved CSX-Pan Am merger on April 14
- STB held public hearings on April 26-27 on rail service problems and recovery efforts

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 Final FY22 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
- 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)
- As a reminder, the 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
 - House-passed bill includes \$10 billion for high-speed rail projects

CHINA TRADE & COMPETITIVENESS BILL

- Senate passed its U.S. Innovation and Competition Act on March 28, 2022 after the House passed its COMPETES Act on February 4, 2022. The bill is aimed at improving supply chain woes and strengthening American competitiveness and trade
 - The two bills have many major differences and they are now being conferenced where Senate and House negotiators will work to find agreement on a final bill
- See summary [here](#) for key provisions and differences in the two bills

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 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 public meetings on April 26 and 27 to discuss rail service issues
 - Class 1s mostly got grilled for how they have handled cargo amid continued supply chain disruptions. STB Chair Oberman made it clear that he's frustrated with the railroad industry's excessive delays, fees and failures to ship goods at agreed upon dates and times
 - The [STB approved the CSX-Pan Am merger](#) on April 14
 - 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.
 - 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:

| <u>USDOT BIL NOFO Tracker (NEW)</u> | |
|---|--|
| <u>Section 130 program BIL fact sheet</u> | <u>Brookings Online Hub</u> |
| <u>CRS Report on FHWA programs in IIJA</u> | <u>CRS Report on passenger rail programs in IIJA</u> |
| <u>White House Guidebook</u> | <u>Updated WH Fact Sheet</u> |
| <u>White House Fact Sheet</u> | <u>USDOT State Fact Sheets</u> |
| <u>AASHTO IIJA Summary 9 15 2021</u> | <u>APTA IIJA Passenger Rail Investment</u> |
| <u>ARTBA IIJA Summary 8 2 2021</u> | <u>FTA Key Priorities</u> |
| <u>IIJA Summary</u> | <u>CBO Score of IIJA</u> |
| <u>National Association of Regional Councils</u> | <u>Dept. of Energy IIJA Fact Sheet</u> |
| <u>National Association of Counties NACo</u> | <u>T&I Links to Excel Apportionment Charts</u> |
| <u>APTA IIJA Public Transportation Investment</u> | <u>AASHTO Implementation Outline for IIJA</u> |

- 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

- April 28, 2022. The Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development held a hearing to discuss and receive testimony on, "A Review of the President's FY 2023 Funding Request and Budget Justification for the US Department of Transportation." [Committee Link and Testimony](#).
- April 27, 2022. The House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit held a hearing to discuss and receive testimony on, "Examining Workforce Development and Job Creation in Surface Transportation Construction." DeFazio Statement [here](#). [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**
- April 6, 2022. The House Committee on Transportation and Infrastructure held a hearing to discuss and receive testimony on, "National Transportation Safety Board Reauthorization." [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**

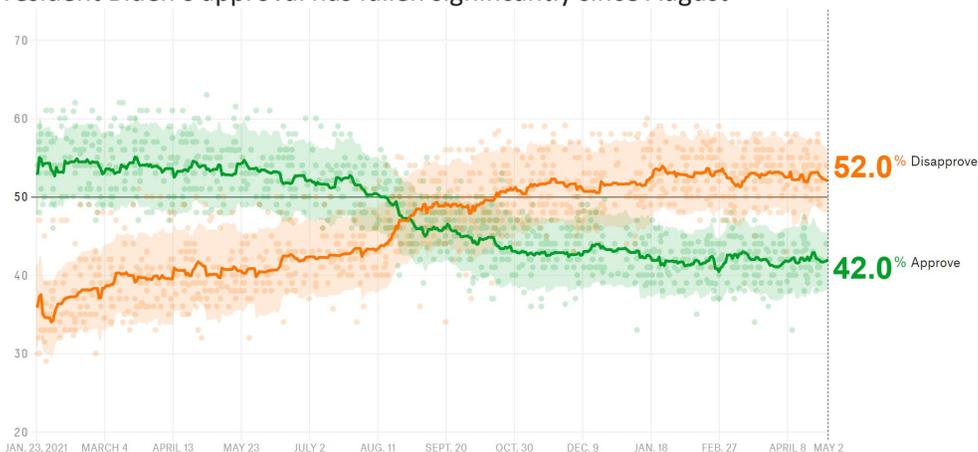
U.S. DEPARTMENT OF TRANSPORTATION/FRA

- April 28, 2022. The Federal Transit Administration (FTA) issued a [Federal Register Notice](#) revealing FTA transit program changes, authorized funding levels and implementation of the Infrastructure Investment and Jobs Act; and FTA FY 2022 apportionments, allocations, program information and interim guidance.
- April 22, 2022. The Federal Railroad Administration (FRA) [announced](#) its rail industry Climate Challenge. The agency is asking owners and operators along the national rail network, and manufacturers of rail equipment, to join FRA's commitment to reach net-zero greenhouse gas emissions in the rail industry and rail transportation by 2050. FRA is also announced its partnership with the Environmental Protection Agency's (EPA) SmartWay program. SmartWay emphasizes supply chain sustainability by helping freight transportation companies measure, benchmark, and improve their energy efficiency. Similarly, the FTA recognized the exemplary efforts of 10 transit agencies to combat climate change through the Sustainable Transit for a Healthy Planet initiative. FTA presented awards to celebrate agencies that are reducing greenhouse gas emissions with unique strategies that work for their systems and their communities. FTA today also launched phase two of the Climate Challenge, which seeks to increase participation and focuses on electrification or zero-emission transition plans to achieve the President's GHG emissions goals. More information about phase two can be found [here](#). The Federal Highway Administration (FHWA) also [highlighted](#) a variety of actions they are taking to protect the environment and combat climate change as part of the aforementioned suite of announcements to celebrate Earth Day 2022.
- April 22, 2022. The [Surface Transportation Board](#) (STB) proposed to amend its emergency service regulations by issuing a [Notice of Proposed Rulemaking](#) that will provide relief for shippers in situations that require immediate relief. The Board proposes, among other things, to clarify that it may act on its own initiative to direct emergency rail service, and to establish an accelerated process for acute service emergencies. Over the past year, the Board heard informally from a broad range of stakeholders about inconsistent and unreliable rail service. Moreover, rail service has become more unreliable, with most stakeholder concerns focusing on crew shortages and inability to move trains. The Board also heard reports of challenges including tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance. The recent acute service issues have made clear the need for the Board to provide the opportunity for shippers to receive swift action to ensure that the nation's freight rail traffic continues to move. Hence, the STB's issuance of the NPRM. Separately, the Board has proposed regulations regarding reciprocal switching under which the Board could require rail carriers to establish switching arrangements in certain circumstances.
- April 18, 2022. The Office of Management and Budget issued guidance on, "[Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)." The IJA broadened the scope of Buy America and directed OMB and federal agencies to **have the new rules in place by May 14, 2022**. Federally funded infrastructure projects are subject to these material requirements:
 - All iron and steel must be produced in the U.S.;
 - All manufactured products must be produced in the U.S.; and

- All construction materials must be manufactured in the U.S. See White House press release here and see ARTBA 4-Page Summary [here](#) and ARTBA comments [here](#).
- [April 18, 2022](#). Congressional Research Service (CRS) issued a report entitled, “[Public Transportation Faces Post-Pandemic Challenges](#).”
- [April 8, 2022](#). The US DOT unveiled its latest Transportation Supply Chain Tracker [here](#). The Tracker is a collaboration across many departments participating in the Task Force and is intended to provide information about critical supply chains to the public. Eight measures are provided in the update
- [April 6, 2022](#). Federal Transit Administration (FTA) [announced](#) a more than \$20 billion investment in American transit, thanks to the Bipartisan Infrastructure Law. The funding levels, detailed by FTA in [apportionment tables](#) (see total funding for each state [here](#) and Full-Year FY 2022 apportionments [here](#)) for each of 30 programs for Fiscal Year 2022 will provide 58 percent more funding
- [March 31, 2022](#). The National Railroad Passenger Corporation ([Amtrak](#)) released its [FY 2023 General and Legislative Annual Report](#) to Congress, which includes its FY 2023 grant request. Amtrak is requesting \$3.3 billion in total grant funding for FY 2023. The table nearby details the \$3.3 billion request. In FY 2023, the Infrastructure Investment and Jobs Act (IIJA) provides Amtrak with \$4.4 billion in guaranteed funding (“advance appropriations”), for discrete capital projects and other specific purposes and cannot be used for operating Amtrak trains. Total new budget authority for FY 2023 is \$7.7 billion, compared to \$6.731 billion in FY 2022. Amtrak is projecting that its FY 2023 ridership will be 28.8 million customer trips, compared with actual ridership of 32.5 million in FY 2019, 16.8 million in FY 2020 and 12.2 million in FY 2021. The railroad’s planned ridership in FY 2022 is 23.2 million.

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** – **209 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