



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

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

KEY UPDATES

- House T&I Committee held an [IIJA/BIL implementation hearing](#) on July 19, 2022
- FY2023 Transportation Appropriations process continued (which funds programs for next fiscal year beginning October 1, 2022) with the full House of Representatives approving its FY23 bill on July 20 and the Senate Appropriations Committee releasing its FY23 bills on July 28
- FRA [published an NPRM](#) for train crew size on July 28, 2022
- Senate Democrats had a breakthrough on the budget reconciliation bill on July 27, 2022
- Federal discretionary grants:
 - Grade crossing elimination grants [notice of funding announced](#) on June 30 and [webinars](#) held on July 14
 - USDOT Reconnecting Communities [notice of funding](#) released
 - USDOT SMART grant program announced (NOFO in Sept 2022)

FY2023 APPROPRIATIONS

- Senate Appropriations Committee released its FY23 Transportation-HUD Appropriations bill on July 28. See bill [here](#) and committee report [here](#)
- House Appropriations Committee marked up its FY23 Transportation-HUD Appropriations bill on June 30 and the full House passed the bill on July 20. See bill [here](#) and committee report [here](#)
- See updated Appropriations table below for more details:

	FY22 House	FY22 Senate	Omni FY22	IIJA FY22	Total FY22	House FY23	Senate FY23
TIGER/BUILD/RAISE	\$1.2b	\$1.09b	\$775m	\$1.5b	\$2.275b	\$775m	\$1.09b
FRA including Amtrak	\$2.7b	\$2.7b	\$2.33b	\$4.4b	\$6.73b	\$2.35b	\$2.6b
<i>CRISI</i>	\$500m	\$522.8m	\$625m	\$1b	\$1.625b	\$630m	\$534.5m
<i>Fed-State SOGR Partnership</i>	\$0	\$220m	\$100m	\$7.2b	\$7.3b	\$555m	\$200m
<i>PRIME grants</i>	\$625m	\$0	\$0	\$0	\$0	\$0	\$0
<i>Rail Restoration/Enhancement</i>	\$0	\$2m	\$0	\$50m	\$50m	\$0	\$0
<i>MagLev</i>	\$5m	\$0	\$0	\$0	\$0	\$0	\$0
RRIF CRP Subsidy	\$0	\$10m	\$0	\$50m	\$50m	\$0	\$0
Section 130 grade crossing set-aside	\$245m	\$245m	-	\$245m	\$245m	\$245m	\$245m
<i>Grade crossing elimination</i>			-	\$600m	\$600m	\$0	\$0
FTA New Starts	\$2.5b	\$2.25b	\$2.25b	\$1.6b	\$3.85b	\$3.012b	\$2.51b
FTA Formula funds	\$12.8b	\$10.8b	-	\$13.355b	\$13.355b	\$13.634b	\$13.634b
WMATA Special Appropriation	\$150m	\$150m	\$150m	-	\$150m	\$150m	\$150m

CHINA TRADE & COMPETITIVENESS BILL

- A revised and slimmed down version of the previously passed bills in the House (COMPETES Act) and Senate (USICA) was passed by Congress. The new bill, “CHIPS and Science Act of 2022” was sent to President Biden and signed into law. See summary [here](#)
 - The bill provides \$52 billion for U.S. companies producing computer chips, as well as billions more in tax credits to encourage investment in chip manufacturing. It also provides tens of billions of dollars to fund scientific research, and to spur the innovation and development of other U.S. technologies.

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
 - On May 6, 2022, the Surface Transportation Board (STB) **announced** that it will require certain railroads to submit service recovery plans as well as provide additional data and regular progress reports on rail service, operations, & employment. [BNSF](#), [CSX](#), [Norfolk Southern](#) (NS) & [Union Pacific](#) (UP) have submitted service recovery plans. The plans can also be found [here](#)
 - The STB held public meetings on April 26 and 27 to discuss rail service issues
 - Class Is 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 July 25, a [letter of opposition](#) was sent by Senators Durbin, Duckworth and Reps. Newman and Krishnamoorthi
 - On July 22, the STB [announced](#) that it will hold a three-day public hearing on the proposed merger between Canadian Pacific Railway Limited (CP) and Kansas City Southern Railway Company (KCS) on September 28, 29, and 30, 2022 at the agency’s headquarters in Washington, DC. The Board is also modifying the procedural schedule so that final briefs will be due by October 14, 2022, after the public hearing
 - On June 22, three Commissioners (of the five Commissioners) of the Federal Maritime Commission [filed a letter](#) with the Surface Transportation Board to “respectfully urge the Surface Transportation Board to disapprove of the consolidation of the railroad systems of the CP and the KCS.” The rationale, as explained in the letter from the Commissioners notes that, “the proposed merger will adversely impact U.S. ports and the primarily U.S.-based intermodal railway systems that serve our ports, and would disproportionately benefit Canadian ports and the primarily Canadian-based intermodal railway systems that service Canadian ports for transportation of U.S.- bound cargo.” The Commissioners logging their concerns with the merger are Carl Bentzel (Republican), Louis Sola (Republican) and Max Vekich (Democrat)
 - On June 14, Metra said that new analysis shows CP-KCS merger would vastly increase commuter train delays, more info [here](#)
 - 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

INFLATION REDUCATION ACT/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
- In a breakthrough amidst a flurry of legislative activity last week, on July 27 Senate Majority Leader Chuck Schumer (D-NY) and [Senator Joe Manchin \(D-WV\)](#) have reportedly agreed to legislation (aka **The Inflation Reduction Act of 2022**) that will target climate change, curb healthcare costs, impose a 15 percent minimum corporate tax (raising about \$313 billion over a decade), and will increase IRS enforcement. The bill is said to raise a total \$739 billion over 10

years with \$370 billion in expenditures to be funneled to energy and climate efforts that will reduce carbon emissions by 40 percent by 2030, another \$64 billion is to extend Affordable Care Act health care subsidies for three years. See one-page summary [here](#). The bill includes \$50b in transportation related funding but nothing specifically for rail.

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

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

WH technical asst guide (NEW)	USDOT BIL NOFO Tracker
Section 130 program BIL fact sheet	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

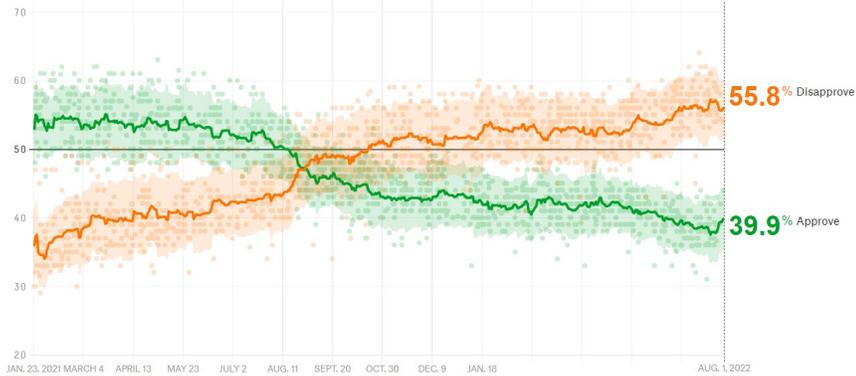
- July 19, 2022. The House Committee on Transportation and Infrastructure held a hearing to discuss and receive testimony on, “Implementing the Infrastructure Investment and Jobs Act.” [Committee Link](#). **Covered by TGA AMS – summary available upon request**
- July 12, 2022. The Senate Committee on Banking, Housing and Urban Affairs held a hearing to discuss and receive testimony on, “Advancing Public Transportation under the Bipartisan Infrastructure Law: Update from the Federal Transit Administration.” The [Honorable Nuria Fernandez](#) (FTA Administrator) was the witness. [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**

U.S. DEPARTMENT OF TRANSPORTATION/FRA/FTA

- [July 27, 2022](#). The Federal Railroad Administration (FRA) issued a [Notice of Proposed Rulemaking](#) establishing safe minimum requirements for the size of train crews depending on the type of operation. A minimum requirement of two crewmembers is proposed for all railroad operations, with exceptions proposed for those operations that do not pose significant safety risks to railroad employees, the public, or the environment. The proposed rule would also establish minimum requirements for the location of crewmembers on a moving train and promote safe and effective teamwork. FRA also proposes a special approval procedure to allow railroads to petition FRA to continue legacy operations with one-person train crews and allow any railroad to petition FRA for approval to initiate a new train operation with fewer than two crewmembers. The Association of American Railroads issued a [press release](#) criticizing the NPRM that is taking, “steps to lock in two person crews into the future.” See Railway Age article [here](#).
- [July 26, 2022](#). The Federal Transit Administration (FTA) [announced](#), via a [Notice of Funding Opportunity](#) (NOFO) and [here](#) and [here](#), that it is making available \$343 million in funding for FY 2022 under the [All Stations Accessibility Program](#) (and ASAP fact sheet [here](#).) (ASAP). [*The IJIA makes available \$350 million per year for FYs 2022 – 2026 for a five-year total of \$1.750 billion. However, after takedowns for administration, OIG et al. the amount made available for distribution is circa \$343 million per year.*] ASAP provides funding to States and local governmental authorities to help finance capital projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems (e.g. subway, commuter rail, light rail) for persons with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities, such as outdoor light-rail boarding and alighting areas, that are fully accessible. The maximum Federal share for an eligible project is not to exceed 80 percent of the net project cost. **Applications are due by 11:59 PM ET on September 30, 2022**
- [July 22, 2022](#). The Federal Railroad Administration (FRA) issued a Notice of Funding Opportunity (NOFO) making available \$209,312 under the [FY 2022 Railroad Safety State Participation Grant Program](#). The FRA will provide grants to States with Federal Railroad Safety Program State Participation Agreements to assist with funding eligible training, travel, and laptop computers. **Applications are due August 22, 2022.**
- [July 21, 2022](#). President Biden nominated Shailen P. Bhatt for Administrator of the Federal Highway Administration. Shailen Bhatt is Senior Vice President of Global Transportation Innovation and Alternative Delivery at AECOM, a multinational infrastructure consulting firm. Bhatt previously served as the Executive Director of the Colorado Department of Transportation, Cabinet Secretary of the Delaware Department of Transportation, and as a presidential appointee at the U.S. Department of Transportation. The FHWA Administrator position has been vacant since Ms. Nicole Nason (a Trump appointee) left the Office in January of 2021 – 18 months ago.
- [July 15, 2022](#). President Biden signed an [Executive Order](#) to establish a Presidential Emergency Board (PEB) to investigate disputes between certain railroads represented by the National Carriers’ Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. The Board is to report to the President with respect to the disputes within 30 days of its creation. The Board is to terminate upon the submission of the report. **Update:** on July 17, 2022, President Biden named three members to the PEB. President Biden named [Ira F. Jaffee](#) to chair the PEB along with David P. Twomey and Barbara C. Deinhardt, both attorneys. There may be work disruption as early as mid-September if labor negotiations between the five Class I freight railroads and the rail unions are not successful.

POLITICAL ENVIRONMENT

- President Biden's approval has fallen significantly since August 2021



- Current split in the 117th Congress
Senate: **50 Democrats** – **50 Republicans** (VP Harris the tiebreaker)
House: **220 Democrats** – **210 Republicans**
- As we near 2022 elections, Republicans feel good about their odds to retake Congressional majorities next year and the polls continue to reflect that
 - Primary elections across the country are in full swing
 - Maps for the next decade are now almost fully approved across the country (except for Louisiana)
- Wave of Democratic retirements expected to continue (already 31 House Dems have announced their retirement)