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December 2, 2015

Surface Transportation Conference Committee Reports Out Five Year Bill

On Tuesday, the House-Senate Conference Committee on the surface transportation authorization legislation filed its conference report reconciling the differences between the House-passed Surface Transportation Reauthorization and Reform (STRR) Act of 2015 and the Senate-passed Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act. The compromise version of the legislation, the Fixing America's Surface Transportation (FAST) Act (H.R. 22), is a five-year authorization for surface transportation programs, fully funded through September 2020. The total authorized funding for Federal Transit Administration (FTA) programs increases to $11.789 billion in Fiscal Year (FY) 2016 and rises to $12.592 billion by FY 2020, or $61.113 billion over the life of the bill. This represents a 10.23 percent increase in year one, and 17.74 percent by FY 2020. The General Fund portion of the authorization increases by 16.28 percent in FY16 and remain flat for the remainder of the Authorization bill.

This is the first long-term surface transportation authorization since SAFETEA-LU was passed in 2005. Of the two bills passed by the chambers, the authorization more closely reflects the higher levels contained in the Senate-passed DRIVE Act. However, all five years of the bill are fully funded, unlike the Senate-passed bill. The House of Representatives is expected to vote on the bill Thursday. The House Rules Committee will meet to produce a rule for consideration of the bill today, Wednesday, December 2, at 3 p.m. Assuming the House passes the conference report on Thursday, there may not be enough time for the Senate to bring up and pass the bill before the current deadline of midnight on December 4th when the current extension expires. It is very likely that an additional short term authorization extension will be needed to allow time for the Senate to consider and pass the legislation, and for the President to sign the bill.

House Transportation and Infrastructure Committee and Conference Chairman Bill Shuster (R-PA), Ranking Member Peter DeFazio (D-OR), Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK), and Ranking Member Barbara Boxer (D-CA) released the following statement on the bill:

"This legislation is a vital investment in our country. A safe, efficient surface transportation network is fundamentally necessary to our quality of life and our economy, and this conference report provides long-term certainty for states and local governments, and good reforms and improvements to the programs that sustain our roads, bridges, transit, and passenger rail system. We knew that reaching an agreement on this measure would be challenging, but every member of the conference committee was certainly up to the task. We appreciate their hard work in this effort, and we look forward to moving this measure forward and getting it signed into law."

To view the bill in its entirety, please click here. To view the joint explanatory statement released by the conference, please click here.

To view APTA's table reflecting the funding levels in the bill, please click here. And for estimated state by state apportionments based on the funding levels contained in the bill, please click here. (Please

recognize that these are only estimates, and are not official apportionment documents.)

FEDERAL TRANSIT PROGRAM PROVISIONS

Bus and Bus Facilities (Sec. 5339)

The Bus and Bus Facilities Program is authorized at a total funding level of $696 million in FY 2016, and $809 million by FY 2020. This is a 62.5 percent increase over the current funding in the first year and 89 percent over the life of the bill. As provided in both the House and Senate bills, and as advocated by APTA, the conference report also includes a new competitive grant program. The bus and bus facilities competitive grant program, would grow from $268 million in 2016 to $344 million by 2020 and includes a $55 million per year set-aside for low and no emission buses. Low and no emission buses also remain eligible for funds under the Sec. 5312 research program.

Urbanized Area Formula (Sec. 5307)

The Urbanized Area Formula program grows at a more modest rate, starting at $4.539 billion in FY 2016 and rising to $4.929 in FY 2020. Urban formula grants increase by 1.8 percent in FY 2016 and 10.56 percent by FY 2020.

The conference report also increases the Small Transit Intensive Cities (STIC) formula take down from the current 1.5 percent of Sec. 5307 formula funds to 2 percent in 2019.

Rural Area Formula (Sec. 5311)

The Rural Area Formula program is funded at $620 million in FY 2016, growing by 10.78 percent over current levels by the fifth year of the bill to $673.3 million. Appalachian Development and Indian reservation programs are continued, as well as the Rural Transit Assistance Program (RTAP).

Growing States and High Density States Formula (Sec. 5340)

Additionally, the bill retains both the High Density States Program and the Growing States Program of Sec. 5340. The House bill had adopted an amendment to eliminate the High Density funding tier, but conferees did not include that change in the final conference report. The Growing States tier increases by 14.3 percent over five years of the bill, while the High Density tier increases by a little over 2 percent total over five years.

State of Good Repair (Sec. 5337)

The State of Good Repair Program also saw significant increases in authorization levels, beginning at $2.507 billion in FY 2016 and rising to $2.684 billion by FY 2020. This represents a 15.7 percent increase over current levels in FY 2016 and a 23.9 percent increase by FY 2020.

Transportation Coordination and Sec. 5310 Program Enhancements

The conference report also provides modest growth for the Sec. 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program, growing by 10.56 percent over five years, similar to the Urban Formula program.

Section 3006 of the bill amends the program to create a Pilot Program for Innovative Coordinated Access and Mobility. A total of $15.25 million is authorized for projects to assist in financing innovative projects for the transportation disadvantaged that improve the coordination of transportation services and non-emergency medical transportation services. This section also requires the Interagency Transportation Coordinating Council on Access and Mobility established under Executive Order No. 13330 to publish a new strategic plan that:

1. Outlines the role and responsibilities of each Federal agency with respect to local transportation coordination, including nonemergency medical transportation;
2. Identifies a strategy to strengthen interagency collaboration
3. Addresses any outstanding recommendations made by the Council in the 2005 Report to the President relating to the implementation of Executive Order No. 13330, including—
   -a cost-sharing policy endorsed by the Council; and
   -recommendations to increase participation by recipients of Federal grants in locally developed,

coordinated planning processes;

4. To the extent feasible, addresses recommendations by the Comptroller General concerning local coordination of transportation services;
5. Examines and proposes changes to Federal regulations that will eliminate Federal barriers to local transportation coordination, including non-emergency medical transportation; and
6. Recommends to Congress changes to Federal laws, including chapter 7 of title 42, United States Code that will eliminate Federal barriers to local transportation coordination, including nonemergency medical transportation.

Public Transportation Innovation/Transit Research

Transit Research programs are largely consolidated within the Sec. 5312 program, now named Public Transportation Innovation. The section authorizes the Secretary to provide assistance for projects and activities to advance innovative public transportation research and development, including demonstration, deployment, and evaluation and the deployment of low or no emission vehicles, zero emission vehicles, or associated advanced technology.

The Transit Cooperative Research Program (TCRP) is moved to the Sec. 5312 program and from programs funded by the General Fund (GF) to programs funded through the Mass Transit Account (MTA), as APTA had recommended. The bill authorizes funding for TCRP at a level of $5 million for each year from 2016 to 2020. This is an increase of $2 million from FY 2015 appropriated levels, although still significantly below the pre-2012 level of $10 million.

The bill also funds Human Resources and Training at $4 million annually, and it funds the National Transit Institute at $5 million annually, both from the MTA.

The bill also provides additional authorizations from the General Fund in the amount of $20 million annually for Sec. 5312 programs.

Fixed Guideway Capital Investment Grants (Sec. 5309, New Starts/Small Starts/Core Capacity)

Appropriations from the General Fund for Capital Investment Grants are authorized at approximately $2.3 billion, in FY 2016 and each year thereafter. This is a 20.7 percent increase over the MAP-21 authorized level, but the level remains flat over the five years of the bill. All General Fund authorizations are subject to the annual appropriations process. Additional flexibility is given in the corridor based bus rapid transit definition regarding weekend service.

Federal Share

The Conference Report (Section 3005) fixes most of the problems in the House bill that APTA opposed regarding federal matching funds for Capital Investment Grants. Specifically, the House bill as originally introduced sought to reduce the maximum government share for a new start, core capacity, or small start project from 80 percent to 50 percent. Additionally, the House bill would have limited the use of other DOT program funds such as surface transportation program (STP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), TIFIA, or TIGER grant funds to be "flexed" to transit programs to be used as the local share of both new starts and state of good repair projects.

APTA worked with key Representatives to eliminate these restrictions. An amendment in the House by Representatives Lipinski (D-IL), Nadler (D-NY), and Dold (R-IL) solved some of the problems – with the clear understanding from the amendment sponsors and APTA that the remaining issues would continue to be worked on. Ultimately, the Conference Report dropped the restrictions on using "flex" funds for transit projects to keep this provision in line with current law. The Conference Report also maintains maximum Section 5309 federal share of 80 percent for core capacity and small start projects.

The Conference Report does, however, change current law for New Starts full funding grant agreements by reducing the maximum Section 5309 FFGA share allowed by law from 80 percent to 60 percent. Other federal funds, including the Surface Transportation Program (STP) within the Federal Highway Programs, can still be used to supplement full funding grant agreements up to 80 percent.

Pilot program for projects with limited federal share
The Conference Report has a pilot program, originally introduced in the Senate bill, that streamlines regulatory steps for up to eight grants for new fixed guideway capital projects, core capacity improvement projects, or small start projects seeking a Federal funding level of 25 percent or less. APTA had raised concerns that the Senate proposal included a mandatory set-aside of funds for this program, even though it is not clear at this time that there would be eligible projects to use those funds. It appears that the conferees heeded our advice and did not wall off 5309 funds that could only be used for this program.

Other changes
The Conference Report allows an optional early rating for small start projects after completing the NEPA review process. It also creates a special rule that the costs of art and landscaping elements will be considered for the purpose of calculating the cost effectiveness of a project.

Additionally, the threshold for a small start project is increased so projects with a total cost of $300 million (changed from $200 million) and a federal share of $100 million (changed from $75 million) will qualify. Also, joint public transportation and intercity passenger rail projects gain eligibility for funding from Fixed-Guideway Capital Investment funds.

The conference report adds Small Starts to the program of interrelated projects under the Capital Investment Grant program. According to the explanatory statement accompanying the Report, "The conferees intend to ensure that project sponsors have the option to seek funding for a program that blends new fixed guideway capital projects, core capacity improvement projects, and small start projects as well as a program of projects that are only new fixed guideway capital projects, core capacity improvement projects, or small start projects."

Buy America Provisions
As in both the House and Senate-passed bills, the Conference agreement increases the Buy America content requirement for transit rolling stock from the current level of 60 percent to 65 percent in 2018 and 70 percent by FY2020. It also requires the Secretary to include the cost of domestic iron or steel used in rolling stock frames and car shells not produced in the United States in the calculation of domestic content if the iron or steel is produced in the United States.

The bill also requires the Secretary, upon denial of a Buy America waiver, to issue a written certification that the steel, iron, or manufactured goods is produced in the United States in a sufficient and reasonably available amount, the item is of satisfactory quality, and include a list of known manufacturers in the United States from which the item can be obtained. This section requires the Secretary to disclose any waiver denial and subsequent written certification on the website of the Department of Transportation.

Procurement (Sec. 3019)
The Conference Report incorporates new procurement opportunities that were proposed by both the House and Senate. The report includes both the Senate pilot for three "geographically diverse" GSA-type procurement schedules and the House "Joint Procurement Clearinghouse" that would allow grantees to "aggregate planned rolling stock purchases and identify joint procurement participants."

The report also authorizes agencies to purchase capital assets through cooperative procurements administered by a state or "nonprofit cooperative purchasing organizations." Agencies may participate in a cooperative procurement regardless of whether they are in the same state as the other parties. The decision to participate in such a contract is voluntary.

In addition, the report removes some current regulatory impediments to the leasing of public transportation vehicles, allowing for innovative leasing opportunities. The bill allows the removable power sources for use in zero emissions vehicles to be leased, which is intended to drive down the procurement cost for these vehicles.

Public Transportation Safety

Minimum Safety Standards
The bill requires that the Department of Transportation National Public Transportation Safety Plan include minimum safety standards to ensure the safe operation of public transportation systems:

The bill mandates that the Secretary conduct a review of the effectiveness of current safety standards and protocols used by public transportation systems. The review will include a wide range of topics including: emergency preparedness plans and training; maintenance, testing, and inspection programs; rail and bus design; fatigue management; vehicle crash worthiness and avoidance systems; and other rail and bus operations safety issues.

After completing the review, the Secretary must consult with public transportation industry representatives and evaluate the need to establish additional federal minimum public transportation safety standards. The Secretary will ultimately develop a comprehensive set of recommendations to improve the safety of public transportation available and publish them on the U.S. DOT website.

Operator Assaults
The conference report includes language that requires the Secretary to issue a NPRM regarding protecting transit operators from customer assaults. The NPRM will consider:
1) different safety needs of drivers of different modes;
2) differences in operating environments;
3) the use of technology to mitigate driver assault risks;
4) existing experience, from both agencies and operators who already are using or testing driver as sault mitigation infrastructure; and
5) the impact of the rule on future rolling stock procurements and vehicles currently in revenue service.

Protection of Safety Data
The bill requires the Secretary to enter into an agreement with the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine to conduct a study to determine whether it is in the public interest to withhold from discovery or admission into evidence in a federal or state court proceeding any plan, report, data, or other information developed, produced, collected, obtained or submitted in compliance with safety management systems.

PASSENGER RAIL AND RAIL SAFETY PROVISIONS
The bill also contains a substantial Rail Title for the first time in a major surface transportation authorization bill. The bill authorizes Amtrak for the first time in seven years and authorizes grants to Amtrak, and state grants for infrastructure, safety, and state of good repair improvements. It includes reforms to Amtrak's grant process and business lines and asset plans, as well as language on route and service planning decisions, right-of-way leveraging, and station development.

The bill includes significant provisions on rail safety affecting freight, intercity and commuter railroads Highway-rail grade crossing safety, the use of locomotive horns at highway-rail grade crossings, and a study of positive train control effectiveness at grade crossings. The safety section also contains language from the DRIVE Act on bridge inspection reports, speed limit action plans, alerters, signal protection, commuter rail track inspections, post-accident assessments, and recording devices.

Other sections of the Rail Title include improvements to Rail Project Delivery, including language on the treatment of improvements to rail and transit under historic preservation requirements, and other language on environmental reviews. The bill also provides for enhancements to rail financing through reforms to the Railroad Rehabilitation and Improvement Financing (RRIF) Program.

<u>Rail Funding</u>

Amtrak
A total of $8.05 billion of funding is authorized for Amtrak grants from FY2016 – 2020. $2.596 billion is authorized for Amtrak projects associated with the Northeast Corridor and $5.454 billion for projects along the Amtrak National Network. Also, at total of $105 million is authorized from FY2016 – 2020 for the Amtrak Office of the Inspector General.

High-speed, Intercity, Passenger, and Freight Rail Funding
A total of $2.2 billion is authorized over five years for rail funding in the FAST Act through three primary, general-funded, programs. Section 11102 (Consolidated Rail Infrastructure and Safety Improvements) authorizes $1.1 billion for grants to assist in financing the costs of improving passenger and freight rail transportation systems in terms of safety, efficiency, or reliability. Funding under this section may be used for the deployment of railroad safety technology including positive train control systems and certain workforce development and training activities.

Section 11103 (Federal-State Partnership for State of Good Repair) authorizes $997 million for grants for capital projects to replace or rehabilitate qualified railroad assets to ultimately reduce the current state of good repair backlog. Section 11104 (Restoration and Enhancement Grants) authorizes $20 million each year from FY2016 - 2020 for operating assistance to initiate, restore, or enhance intercity passenger rail service.

Positive Train Control Funding
APTA has consistently advocated for federal funding to aid in the installation and deployment of mandated positive train control systems. Section 3028 of the FAST Act authorizes $199 million from the Mass Transit Account of the Highway Trust Fund in FY2017 to assist in financing the installation of positive train control systems. Funding under this section may be used to provide the grants, direct loans, and loan guarantees by September 30, 2018. These revenues will be raised from fines collected by the National Highway Traffic Safety Administration (NHTSA).

Passenger Rail Liability Cap
The Senate DRIVE Act increased the current rail liability cap of $200 million to $295 million for AMTRAK and commuter rail operators with adjustments to the cap every five years to reflect changes in the Consumer Price Index-Urban. The House did not address the issue. Heading into conference negotiations, APTA opposed the DRIVE Act position asserting that there is little evidence that the current cap is insufficient to allow claimants to be compensated, or that commuter and passenger railroads are carrying insufficient levels of insurance, based on their risk.

APTA has received differing interpretations from Congressional staff regarding the impacts of the rail liability provisions in the FAST Act. One interpretation asserts that the bill maintains the current rail liability cap of $200 million per incident for commuter railroads and raises the cap to $295 million per incident for AMTRAK with adjustments every five years to reflect changes in the Consumer Price Index. The increased cap level for Amtrak would retroactively apply to the May 2015 Amtrak derailment in Philadelphia. Another interpretation concludes that the FAST Act language increases the liability cap for Amtrak and those commuter railroads with no existing state award limits to $295 million per incident with adjustments every five years to reflect changes in the Consumer Price Index. Under this interpretation the increased cap level for Amtrak would again retroactively apply to May 2015. APTA will continue to seek to clarify the ultimate impact of this provision.

Elsewhere in the bill, the FAST Act mandates that the Secretary of Transportation complete a freight-commuter rail comprehensive shared-use study that will include and an evaluation of rail liability requirements and arrangements. The study will also evaluate the effect on rail passenger services, operations, liability limits, and insurance levels of the assertion of sovereign immunity by a State.

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