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LEGISLATIVE Alert

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION



July 2, 2010

House Appropriations Subcommittees Advance Fiscal Year (FY) 2011 Transportation, Housing and Urban Development (THUD) and Department of Homeland Security Appropriations Bills

On Thursday, July 1, the House Appropriations Subcommittee on Transportation, Housing and Urban Development approved legislation to set spending levels for transportation programs for FY 2011. The bill provides \$11.307 billion for Federal Transit Administration (FTA) programs, an increase of \$574.89 million over FY 2010 funding. Within this amount, \$8.961.35 billion is provided for Formula and Bus programs, an increase of \$618.18 million over last year's amount. The bill includes \$2 billion for the Capital Investments Program (New Starts), and \$150 million for capital grants for the Washington Area Metropolitan Transportation Authority - the same levels provided last year. The committee did not provide funds for the TIGGER (Transportation Investments for Greenhouse Gas and Energy Reduction) program. The increased funding for trust fund programs is subject to enactment of future legislation that extends the current authorization (which expires on December 31) and provides increased contract authority on spending from the Mass Transit Account of the Highway Trust Fund.

For Federal Railroad Administration (FRA) programs, the Subcommittee provides \$1.4 billion for high speed and intercity passenger rail - \$400 million more than the President's budget request for FY 2011, but \$1.1 billion less than last year's level. The bill also appropriates \$75 million for Positive Train Control (the Railroad Safety Technology Program), a \$25 million increase over the FY 2010 amount. Specific amounts made available for each program are shown in the table below:

Fiscal Year 2011 Transportation Budget Request Comparison

| Program | FY 2010 Enacted (Millions) | FY 2011 Administration Request (Millions) | FY 2011 House Appropriations Subcommittee Bill (Millions) |
|---|-------------------------------|--|--|
| Total New Budget Authority All FTA Programs | 10,730.8 | 10,799.5 | 11,307.4 |
| Formula Programs Total[1] | 8,343.2 | 8,271.7 | 8,961.4 |
| Livable Communities Initiative[2] | 0.0 | 306.9 | [306.9] |
| Energy Efficiency/Greenhouse Gas Reduction | 0.0 | 52.7 | 0.0 |
| New Starts/Small Starts | 1,998.0 | 1,822.1 | 2,000.0 |
| National Research and Technology / Research and University Research Centers | 65.7 | 29.7 | 65.4 |
| Technical Assistance and Workforce Development | 0.0 | 28.6 | 0.0 |
| FTA Operations | 98.9 | 113.6 | 130.7 |
| WMATA Preventative Maintenance and Capital[3] | 150.0 | 150.0 | 150.0 |

| | | | |
|---|---------|---------|---------|
| Rail Transit Safety Oversight ^[4] | 0.0 | 24.1 | 0.0 |
| Federal Railroad Administration | | | |
| High Speed and Intercity Passenger Rail | 2,500.0 | 1,000.0 | 1,400.0 |
| Amtrak Operating Grants | 563.0 | 563.0 | 563.0 |
| Amtrak Capital and Debt Service | 1,001.6 | 1,005.2 | 1,203.5 |
| Positive Train Control | 50.0 | 0.0 | 75.0 |
| Office of the Secretary of Transportation | | | |
| National Infrastructure Innovation and Finance Fund | 0.0 | 4,000.0 | 0.0 |
| Livable Communities | 0.0 | 20.0 | 20.0 |
| National Infrastructure Investments (TIGER) | 600.0 | 0.0 | 400.0 |

^[1] A program-by-program breakdown is not yet available

^[2] Includes Jobs Access and Reverse Commute, Alternatives Analysis, and Planning Activities

^[3] Funds separately authorized under the Passenger Rail Investment and Improvement Act of 2008

^[4] Funding for Rail Transit Safety Oversight is included in the amount provided for FTA operations, contingent on enactment of rail safety authorizing legislation

On Friday, June 23, the House Homeland Security Appropriations Subcommittee marked-up its FY 2011 bill which provides \$300 million for rail and transit security grants, the level provided in last year's bill. This is significantly below the \$1.1 billion authorized by the 9/11 Commission Act and requested by APTA.

The schedule for full committee consideration of both bills is uncertain. APTA will provide more information as it becomes available.

For additional information on New Start Allocations in the THUD Subcommittee Appropriations bill, [click here](#).

For additional information, contact Paul Dean of APTA's Government Affairs Department at (202) 496-4887 or pdean@apta.com.

Senate Banking Committee Approves Transit Safety Legislation

On Tuesday, June 27 the Senate Committee on Banking, Housing and Urban Affairs met in an Executive Session to mark-up the Public Transportation Safety Act (PTSA) of 2010. Bipartisan support from both Banking Committee Chairman Chris Dodd (D-CT), and Ranking Member Richard Shelby (R-AL) paved the way for the committee to unanimously approve the bill. The legislation builds upon and modifies an earlier safety oversight proposal by the Obama Administration. The proposed bill is the product of significant input from APTA, many of its member systems, and state safety oversight agencies.

The PTSA provides the Transportation Secretary with authority to establish and implement safety standards and regulations through the development of a national safety plan for all modes of public transportation, including rail fixed guideway, bus, and waterborne transit. It gives the Secretary authority to enforce standards by creating a multi-tiered penalty system that allows for everything from issuing directives to withholding grant funding and civil penalties. If the Secretary seeks to impose grant conditions or withhold grant funding the bill requires written notice to Congress. In addition, the bill specifies that in the cases where federal standards have been enacted, those standards will

preempt similar state laws or regulations, except under certain limited conditions. The national safety plan also requires the Secretary to develop a definition of “state of good repair” for transit assets.

The bill also requires the Secretary to provide oversight of State Safety Oversight Agencies (SSOAs) that will become mandatory for all states with rail fixed guideway systems that are not regulated by another federal agency (such as commuter rail systems regulated by the Federal Rail Administration). Unlike the proposal offered by the Administration, there is no opt-out provision allowing a state to have the FTA conduct oversight duties. States are required to pay 20 percent of the cost of administering SSOAs under the bill. To avoid conflicts of interest, however, the local matching funds cannot originate from transit agency funds or federal transportation funds.

To carry out its oversight duties, the legislation authorizes the DOT to conduct regular investigations, as well as triennial audits of transit agencies. The bill establishes a safety training and certification program for DOT employees and SSOA employees. Designated safety officials for transit systems are also permitted to participate in the training and certification program.

The bill also requires all public transportation agencies to develop individualized system safety plans. While the bill makes clear that vehicle safety performance standards would apply only to vehicles which are not regulated by other federal agencies (such as FRA), it fails to provide a clear exemption from safety performance criteria requirement for agencies that may be regulated by federal agencies other than FTA.

Finally, the legislation requires each transit system to create an asset management program to develop a capital asset inventory and condition assessment programs. This is intended to be used as a tool to help systems to achieve a “state of good repair” for all transit assets.

It should be noted that Senate Banking Committee staff engaged APTA and the public transportation industry throughout this process and solicited input regarding industry concerns. Several outstanding issues, such as full federal preemption, document disclosure protections and concerns about duplicitous safety plans as required under the Rail Safety Improvement Act (RSIA) and potentially under this bill, still need to be addressed. We will continue to work with Committee staff as this bill progresses to see that these issues are resolved.

For additional information, contact Joni Zielinski of APTA’s Government Affairs Department at (202) 496-4865 or jzielinski@apta.com.

Tax Extenders Legislation Stalled; Supplemental Appropriations and Transit Operating Assistance Outlook Unclear

On June 24 Senate Majority Leader Harry Reid (D-NV) delayed consideration of the American Jobs and Closing Tax Loopholes Act of 2010 (HR 4213), commonly referred to as the Tax Extenders Bill, after failing to obtain the necessary votes to pass the bill. Several attempts to reduce the size of the bill in an attempt to sway moderate Senators failed to muster the 60 votes needed for Senate approval. While the alternative fuels tax credit has been included in all drafts of the bill, it is not yet apparent when or how the legislation will be passed. The Congress is expected to take up this, or revised tax legislation at some point later in the legislative session.

For additional information, contact Paul Dean of APTA’s Government Affairs Department at (202) 496-4887 or pdean@apta.com.

White House Unveils Spectrum Auction Plan – Directs Revenues For “Growth Infrastructure”

This week the White House released a plan to auction off commercial communications spectrum for mobile wireless broadband. The plan would direct part of the proceeds to “growth infrastructure” which would include high-speed rail, smart grid, and Next Gen Air Traffic Control. While significant revenues could be realized through such an auction, completion of the process is likely many years away.

To view more information about the plan, [click here](#).

DOT and HUD Announce Notice of Funding Availability for TIGER II and Community Challenge Planning Grants; FTA Issues ANPRM on New/Small Starts; FTA Issues Notice of Final Circular for the Urbanized Area Formula Program (5307)

On June 23, the Department of Transportation (DOT) and the Department of Housing and Urban Development (HUD) formally released a joint Notice of Funding Availability (NOFA) soliciting grant applications for up to \$75 million in planning grants through the TIGER II and Sustainable Communities Challenge Grant programs.

DOT is authorized to use up to \$35 million of funds available through the TIGER II Discretionary Grants program for TIGER II Planning Grants. These planning grants would fund the planning, preparation, and design of surface transportation projects. HUD's Community Challenge Planning Grants provide up to \$40 million for communities to develop plans and strategies or revision of codes that promote livability and sustainability. Applicants may apply to both programs with a single application if the project attains the goals detailed in each one.

Grants may be made for up to 80 percent of project costs, with an exception for rural areas seeking funds through the TIGER II program which does not have a local match requirement. Pre-applications are due July 26, 2010 and applications are due August 23, 2010. APTA will be submitting comments on this issue.

To view the NOFA, [click here](#).

The FTA has also announced an "Advanced Notice of Proposed Rulemaking" (ANPRM) regarding New Starts and Small Starts project justification criteria. This ANPRM seeks public comment on how to change the way major transit project proposals are rated and evaluated. FTA is developing a more holistic approach in rating cost-effectiveness, as well as economic development and environmental benefits. Comments are due August 2, 2010.

The FTA is currently holding a series of outreach sessions across the country on the ANPRM. To view the schedule, [click here](#).

To view the ANPRM, [click here](#).

Effective May 1, The FTA also issued a Notice of Availability of Final Circular for the Urbanized Area Formula Program (5307). Notably, the circular provides clarification on how transit agencies can define capital.

To view the circular, [click here](#).

For additional information, contact APTA's James LaRusch at (202) 496-4808 or jarusch@apta.com.

Senators Pursue Smaller Energy and Climate Bill; Transportation Fuels Not Addressed In Recent Negotiations

Following a meeting with President Obama and other Senators this week, Senators John Kerry (D-MA) and Joseph Lieberman (I-CT) announced that they would pursue a smaller energy and climate bill in the remaining months of this year's legislative session. A smaller bill could set a cap on greenhouse gas emissions from electric utilities, but the transportation sector is not expected to be included in a carbon cap and there would be no sales of emission allowances related to motor fuels. Under this scenario, there will be little opportunity for new investment in public transportation and other transportation infrastructure.

Senate Majority Leader Harry Reid is currently assembling a proposal for possible debate in late July. That bill could include the smaller carbon cap and provisions related to energy efficiency, renewable energy, and off-shore oil drilling. While transportation funding is unlikely to be included, other transportation elements could be included such as the planning provisions from the CLEAN-TEA

legislation sponsored by Senator Tom Carper (S. 575). When the legislation is introduced, APTA will provide further information.

For additional information, contact Homer Carlisle of APTA's Government Affairs Department at (202) 496-4810 or hcarlisle@apta.com.



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