Senate Commerce Committee Approves Railroad Reform Legislation

Today, the Senate Committee on Commerce, Science, and Transportation approved, by voice vote, the “Railroad Reform, Enhancement, and Efficiency Act” with seven amendments. The bi-partisan measure authorizes $6.6 billion in Amtrak funding from Fiscal Year (FY) 2016 to 2019 (averaging $1.65 billion per year) and $2.28 billion (averaging $570 million per year) for grants to rail agencies to fund a wide range of critical projects including the installation of Positive Train Control (PTC) systems, infrastructure and grade-crossing improvements, and rail line relocation initiatives. The bill also makes grant funding available for research initiatives, the development of rail safety standards and rail workforce development programs. Additionally, the bill includes several safety provisions, most notably mandates for speed limit and grade crossing action plans and installation of speed warning signage and alerters. Encourages the use of confidential close call reporting system programs to identify hazards before they lead to accidents.

The bill also contains language to enhance the Railroad Rehabilitation and Improvement Financing (RRIF) program application and notification process. The bill also prioritizes RRIF loan applications to support PTC implementation. Lastly, the measure includes provisions aimed at expediting the project delivery of capital rail projects by making environment reviews and approvals for construction in and around historic sites less complex.

During the markup, a pre-negotiated manager’s amendment was offered by Chairman John Thune to make a variety of changes to the bill. Included in the amendment was language that would do the following:

- **Index the liability cap to inflation** – Adjusts passenger rail liability cap for inflation from its 1997 level, from $200 to $295 million, adjusting it every ten years for inflation, and applying the revised cap to the Amtrak accident on May 12, 2015. The amendment does not establish a mandatory minimum for insurance coverage.
- **Inward- and Outward Facing Cameras** – Requires all passenger railroads to install inward- and outward-facing cameras in all controlling locomotive cabs and cab car operating compartments in such passenger trains to more effectively monitor train crews and to improve accident investigations. Authorizes the Secretary to require the installation of audio recording devices.

The Committee also adopted an amendment offered by Senator Gary Peters (D-MI) requiring that the Secretary of Transportation complete a post-accident report of the May 12, 2015 Amtrak accident in Philadelphia, PA.

To view the Committee summary of the bill as passed, the full bill text and amendments adopted today, please click here.

Senate Appropriations Committee Approves FY2016 Transportation Bill

On Thursday, the Senate Committee on Appropriations approved the FY2016 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill by a vote of 20 – 10. The bill considered and passed by the full Senate Appropriations Committee, contained very few changes from the one passed by the subcommittee on Tuesday. Democratic and Republican Members of the Committee acknowledged that the discretionary spending caps set forth in the Budget Control Act were restraining spending to a point that prevented them from funding important priorities. While several amendments were offered that would have increased spending on Amtrak, TIGER grants, New Starts, and PTC implementation, none were adopted.
According to the Committee summary, the bill provides $55.65 billion in discretionary spending, a $1.88 billion increase above FY2015 and $7 billion below the President’s budget request. Due to a combination of reduced Federal Housing Administration receipts and an increase in the cost of maintaining existing rental housing vouchers, the overall Senate bill actually represents a decrease of $1.9 billion below current levels. The Committee did not adopt recommendations in the administration budget request that would have designated much of the Department of Transportation budget as mandatory spending.

The bill includes $17.78 billion in discretionary appropriations for the Department of Transportation, $17 million below the FY2015 enacted level and $3.9 billion below the President’s request.

For the Federal Transit Administration (FTA), the bill appropriates $10.5 billion, $424 million below the FY2015 enacted level. Transit formula grants are funded at a level of nearly $8.6 billion, the current levels authorized under the extension of MAP-21. The bill provides a total of $1.6 billion for Capital Investment Grants (New Starts), fully funding all current “Full Funding Grant Agreement” (FFGA) transit projects as well as anticipated projects. Also $75 million is provided for core capacity projects and $30 million for Small Starts projects.

The bill appropriates $1.68 billion for the Federal Railroad Administration, an increase of $53 million above the FY2015 enacted level. This includes $289 million for Amtrak operations and continued service for all current routes, and $1.1 billion for capital grants. The bill also provides an additional $17 million for the Northeast Corridor. The bill also provides $288 million, $12 million above the FY2015 enacted level for rail safety and research programs, including inspectors and training. The bill also provides $50 million for rail safety grants, to support implementation of PTC, enhance passenger rail safety, and reduce highway-rail grade crossings incidents.

As in prior years, the Senate has prioritized National Infrastructure Investments (also known as TIGER Grants) in the bill, appropriating $500 million, equal to the FY2015 enacted level, for TIGER grants.

For Federal Highway Administration programs, the bill appropriates $40.26 billion, equal to the FY2015 enacted level, from the Highway Trust Fund to be spent on the Federal-aid Highways Program, contingent on the enactment of new transportation authorization legislation. The bill also frees up to $2.4 billion in unused earmarks for infrastructure projects that can be spent on other transportation projects.

House Subcommittee on Railroads, Pipelines, and Hazardous Materials Holds Hearing on PTC

On Wednesday, the House Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing titled “The State of Positive Train Control in the United States”. In this hearing, several stakeholders gave testimony regarding the current status of their progress, reasons for delays in implementation, possible ramifications of not meeting the years-end deadline, as well as several other topics. The full list of witnesses is below:

- Ms. Sarah Feinberg, Acting Administrator, Federal Railroad Administration (FRA)
- Mr. Charles Mathias, Associate Bureau Chief, Wireless Telecommunications Bureau, U.S. Federal Communications Commission (FCC)
- Mr. Frank Longero, Vice President - Service Design, CSX Transportation
- Mr. Donald Orseno, Executive Director & CEO, Metra Commuter Railroad
- Mr. Russell Kerwin, Deputy Project Manager, PTC, Metrolink/AECOM

Chairman Jeff Denham (R-CA) noted in his opening statement, “Since the 2008 mandate was enacted, freight, passenger, and commuter railroads have spent the last seven years working to implement PTC…The American Public Transportation Association has estimated that the commuter and passenger railroads will have to spend nearly $3.5 billion on PTC. In addition the sheer cost and complexities of the system, there have been unexpected delays.”

Acting Administrator Feinberg stated that the FRA plans to enforce the deadline for PTC implementation, noting that it was within their discretion to impose emergency orders, compliance agreements, or civil penalties to encourage railroads to complete implementation as soon as possible. She stated that it was not within her legal power to extend the deadline for individual agencies even if progress was being made in good faith, as recommended by APTA, barring additional Congressional action. Additionally, Feinberg informed the subcommittee that the FRA would be finalizing their enforcement policy and submitting it to Congress in the near future.

Donald Orseno, Executive Director/Chief Executive Officer, Metra Commuter Railroad, and Chair of the APTA
Commuter Rail Committee highlighted the significant challenges commuter rail agencies have been addressing, especially with respect to interoperability concerns, spectrum needs, and the financial demands involved in completing PTC implementation. Another topic which Mr. Orseno brought to the attention of the subcommittee was the potential of liability problems for agencies operating past the PTC deadline while not in full compliance. To view the written testimony of Donald Orseno, please click here.

In addition, Russell Kerwin testified that Metrolink currently has PTC in Revenue Service Demonstration across their entire 341-mile network of Metrolink-owned lines and intends to be in compliance by the end of the year. They are also working with their freight railroad partners to ensure that PTC is implemented region-wide. The view the written testimony of Russell Kerwin, please click here.

To view the hearing in its entirety or to read the prepared remarks offered by the witnesses, please visit the committee website here.

**Senate Environment and Public Works Committee Approves Bipartisan Highway Authorization Bill**

The Senate Environment and Public Works (EPW) Committee on Wednesday unanimously passed the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act, S. 1647, which the Committee leadership hopes will serve as the highway title for a six-year Surface Transportation authorization bill to be passed this year. An eventual bill would also include three other titles that have yet to be introduced: a transit title (Banking Committee), a safety title (Commerce Committee), and, most importantly, a funding title (Finance Committee). The DRIVE Act grows the highway program, providing $278 billion in contract authority over six years.

The DRIVE Act increases funding for key formula programs, including the National Highway Performance Program (NHPP), the Surface Transportation Program (STP), and the Congestion Mitigation and Air Quality Improvement (CMAQ) Program by more than 10 percent over six years. The bill also creates two new programs, the National Freight Program and the Assistance for Major Projects program. The National Freight Program (NFP) would provide between $2 billion to $2.5 billion each year over the life of the bill to support a DOT designated national highway freight network. States may obligate up to 10 percent of their NFP funds for public and private freight rail, ports, and intermodal facilities. The Assistance for Major Projects program (AMP) is a nationally competitive discretionary grant program funded at $300 to $450 million per year over the six-year bill. The program is designed to help complete critical, high-cost infrastructure projects that achieve national or regional objectives. This program is administered by the Federal Highway Administration, but the ultimate awards are subject to congressional approval. Transit agencies are eligible for grants under AMP, though the program only allows 20 percent of the program funds to go to transit, rail, and other intermodal projects.

The TIFIA loan program was amended to add eligibility for transit-oriented development projects, defined as “a project to improve or construct public infrastructure that is located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, and capital project[s].” Eligible projects must have costs reasonably anticipated to be at least $10 million.

The DRIVE Act also:

- Continues to streamline the environmental review process;
- Increases the percentage of STP funds suballocated on the basis of population from 50% to 55%;
- Allows intermodal facilities that support intercity transportation to be included in a metropolitan TIP;
- Makes changes to the ferry program apportionment formula (35% passengers, 35% vehicles carried, and 30% percent route nautical miles);
- Makes mass transit project funding eligible for CMAQ funds related to diesel retrofits;
- Allows transit executives to serve as local municipality representatives on an MPO;
- Authorizes $72.5 million per year for the University Transportation Centers (UTC) program;
- Establishes a new Transportation Innovation title;
- Provides additional tolling flexibility, allowing states to toll new interstate lane construction;
- Removes limitations on HOV-to-HOT lane conversions for states that meet certain requirements;
- Establishes a pilot program for states to buy and sell toll credits.

The bipartisan support shown for a transportation bill that includes growth (albeit modest growth) of the program is a positive step forward for enacting a Surface Transportation authorization this year. Highway Trust Fund
spending authority expires on July 31, and it is expected that Congress will pass a short-term extension before that date, but the length of the next extension remains in question. The committee vote on Tuesday moves the process along toward the potential passage of a long-term bill in 2015. The next steps include the Banking, Commerce, and Finance Committees introducing their titles before a comprehensive bill will be considered on the Senate floor. To view an archive webcast of the Senate EPW markup, click here.

House and Senate Tax Committees Hold Additional Hearings on Transportation Funding

This week, House Ways and Means Subcommittee on Select Revenue Measures held a hearing examining various repatriation proposals to fund the highway trust fund. Subcommittee Chairman Dave Reichert (R-WA) stated that repatriation is just one of the possible funding solutions and that the Committee will continue to examine. Ranking Member Richard Neal (D-MA) remarked that the highway trust fund has always been funded through a user fee principle and doesn't want to see the Committee drift away from that idea. To view witness testimony from this hearing, click here.

The Senate Finance Committee also held a hearing exploring innovative financing options for transportation infrastructure. The Committee focused on public private partnerships and the need for expanded flexibility for private activity bonds. Both Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) agreed that financing solutions are not a substitute for funding alternatives, but rather allows states and local governments increased flexibility in leveraging the public dollars they do receive. To view an archive webcast of the Senate Finance Committee hearing and to read witness testimony, click here.

For questions on any of the issues addressed in this Legislative Alert, please do not hesitate to contact APTA Government Affairs.