



BIPARTISAN INFRASTRUCTURE LAW
SECTION-BY-SECTION ANALYSIS OF THE INTERCITY PASSENGER RAIL POLICY
PROVISIONS
OF THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (P.L. 117-58)
March 2022

Division B—Surface Transportation Investment Act
Title II—Rail
Subtitle C –Intercity Passenger Rail Policy

Sec. 22303. Consolidated Rail Infrastructure and Safety Improvements.

- Amends 49 U.S.C. § 22907 (Consolidated Rail Infrastructure and Safety Improvements) and the definition of “eligible recipient” to include:
 - the District of Columbia;
 - an association representing a Class II or Class III railroad; and
 - federally recognized Indian Tribes;

- Adds to the list of eligible projects:
 - development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities;
 - research, development and testing to advance and facilitate innovative rail projects, including projects using electromagnetic guideways in an enclosure in a very low-pressure environment;
 - preparation of emergency plans for communities through which hazardous materials are transported by rail; and
 - rehabilitating, remanufacturing, procuring, or overhauling locomotives, provided that such activities result in a significant reduction of emissions

- Permits applicants to use costs incurred previously for preliminary engineering associated with highway-rail grade crossing improvement projects and trespassing prevention projects to satisfy the non-federal share requirements.

Sec. 22304. Restoration and Enhancement Grants.

- Amends 49 U.S.C. § 22908 (Restoration and Enhancement Grants) definition of “applicant” to include:
 - a federally recognized Indian Tribe;
 - any rail carrier in partnership with at least one of the entities or any combination of the entities described in § 22908.
- Defines the term “operating assistance” with respect to any route subject to section 209 of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432) to mean any cost allocated, or that may be allocated, to a route pursuant to the cost methodology established under such section or § 24712;
- Extends the funding plan requirement as part of an application of funds to account for operating and capital costs for a six-year period instead of a three-year period.
- Includes in the list of priorities for funding routes selected under the Corridor Identification and Development Program and operated by Amtrak.
- Revises the maximum funding of the projected net operating costs as follows:
 - 90 percent for the first year of service;
 - 80 percent for the second year of service;
 - 70 percent for the third year of service;
 - 60 percent for the fourth year of service;
 - 50 percent for the fifth year of service; and
 - 30 percent for the sixth year of service.

Sec. 22305. Railroad Crossing Elimination Program

- Amends chapter 229 of Title 49 (Rail Improvement Grants) to include a new § 22909 (Railroad Crossing Elimination Program) and requires the Secretary to establish a competitive grant program to fund highway-rail or pathway-rail grade crossing improvement projects that focus on improving the safety and mobility of people and goods.
- States that the goals of the program are to:
 - eliminate highway-rail grade crossings that are frequently blocked by trains;
 - improve the health and safety of communities;
 - reduce the impacts that freight movement and railroad operations may have on underserved communities; and
 - improve the mobility of people and goods.

- Defines “eligible recipients” as a:
 - State, including the District of Columbia, Puerto Rico, and other United States territories and possessions;
 - political subdivision of a State;
 - federally recognized Indian Tribe;
 - unit of local government or a group of local governments;
 - public port authority;
 - metropolitan planning organization; and
 - group of entities described above.

- Defines eligible projects as a highway-rail or pathway-rail grade crossing improvement project (including acquiring real property interests) involving:
 - grade separation or closure, including through the use of a bridge, embankment or tunnel; track relocation;
 - improvement or installation of protective devices, signals, signs or other measures to improve safety, provided that they are related to a separation or relocation project;
 - other means to improve the safety and mobility of people and goods at highway-rail grade crossings (including technological solutions); or
 - the planning, environmental review, and design of an eligible project.

- Includes eligibility for commuter rail passenger transportation projects, provided that as a condition of receiving a grant under this section:
 - any employee covered by the Railway Labor Act (45 U.S.C. 151 et seq.) and the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.) who is adversely affected by actions taken in connection with the project financed in whole or in part by such grant shall be covered by employee protective arrangements required to be established under 49 U.S.C. § 22905(c)(2)(B).
 - a grant recipient, and the successors, assigns, and contractors of such grant recipient shall be bound by the employee protective arrangements and responsible for the implementation of such arrangements and for the obligations under such arrangements, but may arrange for another entity to take initial responsibility for compliance with the conditions of the arrangement.

- Directs the Secretary to establish application requirements and provides that applicants obtain the necessary approvals from any impacted rail carriers or real property owners before proceeding with the construction of a project funded by a grant under the program, except for planning projects if the applicant agrees to work collaboratively with rail carriers and right-of-way owners.

- Requires the Secretary, in awarding grants, to consider the extent to which proposed projects would:
 - improve safety at highway-rail or pathway-rail grade crossings;
 - grade separate, eliminate, or close highway-rail or pathway-rail grade crossings;
 - improve the mobility of people and goods;
 - reduce emissions, protect the environment, and provide community benefits, including noise reduction;
 - improve access to emergency services;
 - provide economic benefits; and
 - improve access to communities separated by rail crossings.

- Directs the Secretary to also consider in awarding grants:
 - the degree to which the proposed project will use innovative technologies; innovative design and construction techniques; or construction materials that reduce greenhouse gas emissions;
 - the applicant’s planned use of contracting incentives to employ local labor, to the extent permissible under federal law;
 - whether the proposed project will improve the mobility of multiple modes of transportation, including ingress and egress from freight facilities; or users of nonvehicular modes of transportation, such as pedestrians, bicyclists, and public transportation;
 - whether the proposed project is identified in the freight investment plan component of a State freight plan, as required under § 70202(b)(9); a State rail plan prepared in accordance with chapter 227; or a State highway-rail grade crossing action plan, as required under § 11401(b) of the Passenger Rail Reform and Investment Act of 2015 (title XI of Public Law 114–94); and
 - the level of financial support provided by impacted rail carriers.

- Limits the distribution of awards in any fiscal year as follows:
 - Not less than 20 percent set aside for projects in rural areas or Tribal lands, with five percent of those funds reserved for projects in counties with 20 or fewer residents per square mile;
 - Not less than 25 percent of grant funds set aside for planning projects shall be awarded for projects located in rural areas or on tribal land;
 - Not more than 20 percent of the grant funds available in any fiscal year may be selected for projects in any single state; and
 - No grants (except planning grants) awarded shall be for less than \$1 million.

- Provides a federal share at 80 percent.

Sec. 22306. Interstate Rail Compacts.

- Amends chapter 229 of Title 49 to include new 49 U.S.C. § 22910 (Interstate Rail Compacts Grant Program) to require the Secretary to establish a competitive grant program to provide financial assistance to entities implementing interstate rail compacts for costs of administration, systems planning, promotion, and operations coordination.
- Grants are awarded to applicants with eligible expenses related to intercity passenger rail service to be operated by Amtrak.
- Limits grants to no more than 10 grants in any fiscal year, and grants may not exceed \$1,000,000 each.
- Requires recipients to provide a non-federal match of at least 50 percent.

Sec. 22307. Federal-State Partnership for Intercity Passenger Rail Grants.

- Amends 49 U.S.C. § 24911 (Federal-State Partnership for State of Good Repair) to broaden the program's focus to intercity passenger rail, retitling it to "Federal-State Partnership for Intercity Passenger Rail Grants".
- Adds "a federally-recognized Indian Tribe" to the definition of "applicant".
- Broadens the grant program's focus from "reducing the state of good repair backlog with respect to qualified railroad assets" to "reducing the state of good repair backlog, improve performance, or expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved."
- Eligible projects, including acquisition of real property interests, are defined as a project to:
 - replace, rehabilitate, or repair infrastructure, equipment, or a facility used for providing intercity passenger rail service to bring such assets into a state of good repair;
 - improve intercity passenger rail service performance, including reduced trip times, increased train frequencies, higher operating speeds, improved reliability, expanded capacity, reduced congestion, electrification, and other improvements, as determined by the Secretary; and
 - expand or establish new intercity passenger rail service.

In addition, a group of related projects described above as well as the planning, environmental studies, and final design for a project or group of projects is eligible to receive grants.

- Requires the Secretary to consider the following selection criteria in awarding funding:

For projects located on the Northeast Corridor:

- make selections consistent with the Northeast Corridor Project Inventory (NCPI), unless when necessary to address materially changed infrastructure or service conditions, changes in project sponsor capabilities or commitments, or other significant changes since the completion of the most recently issued NCPI; and
- for projects that benefit intercity and commuter rail services, only make such selections when Amtrak and the public authorities providing commuter rail passenger transportation at the eligible project location are in compliance with § 24905(c)(2) (cost allocation); and identify funding for the intercity passenger rail share, the commuter rail share, and the local share of the eligible project before the commencement of the project.

For projects not located on the Northeast Corridor:

- give preference to eligible projects for which Amtrak is not the sole applicant; that improve the financial performance, reliability, service frequency, or address the state of good repair of an Amtrak route; and that are identified in, and consistent with, a corridor inventory prepared under the Corridor Identification and Development Program pursuant to § 25101;
 - take into account the cost-benefit analysis of the proposed project, including anticipated private and public benefits relative to the costs of the proposed project;
 - the degree to which the proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project;
 - the applicant's past performance in developing and delivering similar projects, and previous financial contributions;
 - whether the applicant has, or will have the legal, financial, and technical capacity to carry out the project; satisfactory continuing access to the equipment or facilities; and the capability and willingness to maintain the equipment or facilities;
 - if applicable, the consistency of the project with planning guidance and documents set forth by the Secretary or otherwise required by law;
 - whether the proposed project serves historically unconnected or under-connected communities; and
 - any other relevant factors, as determined by the Secretary;
- Sets aside not less than 45 percent of the amounts appropriated for projects not located along the Northeast Corridor, of which not less than 20 percent shall be for projects that benefit (in whole or in part) a long-distance route
 - Sets aside not less than 45 percent of the amounts appropriated for projects listed on the NCPI.

- Requires the Secretary to, not later than one year after the date of enactment, and every two years thereafter, create a predictable project pipeline that will assist Amtrak, States, and the public with long-term capital planning by publishing an NCPI.
- Permits the Secretary to provide funding to a project over multiple years through a phased funding agreement and letter of intent if the project is highly rated and federal assistance for the project is more than \$80 million.
- Provides that a phased funding agreement may include a commitment, contingent on amounts to be specified in law in advance, to obligate an additional amount from future available budget authority.
- States that an applicant who does not carry out a project for reasons within the control of the applicant shall repay all federal grant funds awarded for the project. A National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) analysis that results in the selection of a no build alternative is not considered within the applicant's control.
- Requires the Secretary, not later than the first Monday in February of each year, to submit to Congress a report that includes an allocation proposal to finance grants for projects.

Sec. 22308. Corridor Identification and Development Program.

- Amends Part C of Subtitle V of Title 49 to include a new Chapter 251-Passenger Rail Planning, and includes a new § 25101, Corridor Identification and Development Program.
- Requires the Secretary to, not later than 180 days after the date of enactment, establish a program to facilitate the development of intercity passenger rail corridors.
- Requires the program to include:
 - a process for eligible entities to submit proposals for the development of intercity passenger rail corridors;
 - a process for the Secretary to review and select proposals;
 - criteria for determining the level of readiness for federal financial assistance of an intercity passenger rail corridor, including identification of a service operator which may include Amtrak or private rail carriers; identification of a service sponsor or sponsors; identification of capital project sponsors; engagement with the host railroads; and other criteria as determined appropriate by the Secretary;
 - a process for preparing service development plans, including the identification of planning funds, such as funds made available under § 24911(k) and interstate rail compact grants established under § 22210;
 - the creation of a pipeline of intercity passenger rail corridor projects;
 - planning guidance, including guidance for intercity passenger rail corridors not selected; and

- such other features as the Secretary considers relevant to the successful development of intercity passenger rail corridors.
- Authorizes the Secretary to receive proposals from: Amtrak, States, groups of States, entities implementing interstate compacts, regional passenger rail authorities, regional planning organizations, political subdivisions of a State, federally recognized Indian Tribes, and other public entities, as determined by the Secretary.
- Requires the Secretary in selecting intercity passenger rail corridors to consider several factors including:
 - whether the route was identified as part of a regional or interregional intercity passenger rail system planning study;
 - projected ridership, revenues, capital investment, and operating funding requirements; anticipated environmental, congestion mitigation, and other public benefits;
 - projected trip times and their competitiveness with other transportation modes;
 - anticipated positive economic and employment impacts, including development in the areas near passenger stations, historic districts, or other opportunity zones; and
 - committed or anticipated State, regional transportation authority, or other non-federal funding for operating and capital costs; and
 - benefits to rural communities.

In addition, the Secretary is to consider whether the corridor:

- is included in a State's approved State rail plan developed pursuant to chapter 227;
- serves historically unserved or underserved and low-income communities or areas of persistent poverty;
- would benefit or improve connectivity with existing or planned transportation services of other modes;
- connects at least two of the 100 most populated metropolitan areas;
- would enhance the regional equity and geographic diversity of intercity passenger rail service;
- is or would be integrated into the national rail passenger transportation system; and
- would create benefits for other passenger rail routes and services.

Last, the Secretary must consider whether a passenger rail operator, including a private rail carrier, has expressed support for the corridor.

- Directs the Secretary, for each corridor proposal selected for development, to partner with the entity that submitted the proposal, relevant States, and Amtrak, as appropriate, to prepare a service development plan (or to update an existing service development plan).

- Requires the Secretary to, not later than one year after the establishment of the program, and by February 1 thereafter, to create a project pipeline that:
 - identifies intercity passenger rail corridors selected for development;
 - identifies capital projects for federal investment, project applicants, and proposed federal funding levels, as applicable, consistent with the corridor project inventory;
 - specifies the order in which the Secretary would provide federal financial assistance, subject to the availability of funds, to projects that have identified sponsors, including a method and plan for apportioning funds to project sponsors for a five-year period, which may be altered by the Secretary, as necessary, if recipients are not carrying out projects on the anticipated schedule;
 - takes into consideration the appropriate sequence and phasing of projects described in the corridor project inventory, and existing commitments and anticipated federal, project applicant, sponsor, and other relevant funding levels for the next five fiscal years
 - is prioritized based on the level of readiness of the corridor; and
 - reflects consultation with Amtrak.

- Defines “intercity passenger rail corridor” as
 - a new intercity passenger rail route of less than 750 miles;
 - the enhancement of an existing intercity passenger rail route of less than 750 miles;
 - the restoration of service over all or portions of an intercity passenger rail route formerly operated by Amtrak; or
 - the increase of service frequency of a long-distance intercity passenger rail route.

Sec. 22309. Surface Transportation Board Passenger Rail Program.

- Directs the Surface Transportation Board to establish a passenger rail program and hire up to 10 additional full-time employees to assist in carrying out its passenger rail responsibilities.