



November 21, 2018

Almost three weeks after Election Day, several US House elections remain undecided and one Senate seat (MS) is subject to a runoff. It appears that Democrats may end up with a net gain of as many as 40 seats in the House to take control, while Republicans will retain control of the Senate in the 116th Congress holding 52 or 53 seats. Rep. Jeff Denham (R-CA), who was positioning himself to become the next chair of the House T&I Committee, has officially lost his election.

Lame Duck Session

Congress returns to session next week to finish up the 115th Congress. The members of the 116th Congress will be sworn-in on January 3. The primary legislation that needs to be completed in the post-election Lame Duck session is passage of the remaining seven FY'19 appropriations bills – which include the THUD (US DOT) annual funding bill. It appears that the THUD bill is essentially complete and ready for final passage, but it may be packaged with other pending bills that are more controversial, putting its completion in jeopardy. The current Continuing Resolution (CR), which temporarily funds key federal agencies, expires on December 7. President Trump has threatened to veto the remaining appropriations bills if they do not include sufficient money for the border wall which could lead to a partial government shutdown. However, many Members of Congress plan to push for quick passage of the funding bills in an effort to “clear the deck” for the next Congress.

Infrastructure Legislation

Rep. Peter DeFazio (D-OR) will become the Chairman of the House Transportation & Infrastructure Committee in the 116th Congress. He has given several public remarks and press interviews since the election on his priorities for infrastructure legislation and for identifying new, dedicated revenue for the Highway Trust Fund. Among the points he has made:

- the Administration should work with Congress to immediately develop a robust infrastructure bill focusing on the three “M”s – “Maintain, Modernize, and Move”.
- the Number 1 priority will be to hold oversight hearings on the Administration’s efforts to delay the release of transit grants and project approvals.
- any new revenue legislation should include indexing and the ability to bond against the revenue.



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- any additional surface transportation revenues that are identified should be run through the existing FHWA/FTA program structure.
- the balance in the federal Harbor Maintenance Trust Fund should be drawn down.
- FAA's Passenger Facility Charge (PFC), which is used to fund airport infrastructure, should be increased.
- a new subcommittee should be created under the House Ways & Means Committee to focus on infrastructure funding and financing – an effort Rep. Earl Blumenauer (D-OR), who sits on that committee, is championing.
- no further extensions to the December 31, 2018 deadline to implement FRA's Positive Train Control (PTC) should be allowed.
- the Administration must expend all congressionally authorized and appropriated funds in a timely manner – particularly discretionary grants, including FTA Capital Improvement Grants (CIGs).
- climate-resilient infrastructure projects should be incentivized.
- the existing 5.9 GHz spectrum band for connected and autonomous car technology should be retained exclusively for transportation purposes.
- the ability for Congress to designate project earmarks (although likely called by some other name) and Projects of Regional and National Significance should be restored along with the appropriate level of transparency.
- US DOT needs to implement the streamlining provisions authorized in MAP-21 and the FAST Act.

Other News

- Last week, US DOT Deputy Secretary Jeffrey Rosen stated in a public forum that the \$1.5B in FY'18 BUILD (formerly TIGER) discretionary grants would be announced by the Department by the congressionally imposed deadline of December 18. He also said that the FY'19 INFRA discretionary grants Notice of Funding Opportunity (NOFO) would be released soon. The FAST Act authorized \$900M annually for INFRA grants.
- The Federal Railroad Administration (FRA) has issued a final rule establishing performance-based safety standards for railroad passenger equipment. The final



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rule defines a new category of “Tier III” high-speed rail train operations which could travel up to 220 mph utilizing existing infrastructure in areas with exclusive rights-of-way and without grade crossings. Here is a [link](#) to the FRA press release and a [link](#) to the November 21 Federal Register notice.

- FRA has released the NOFO for \$272M in FY'18 funding for the Federal-State Partnership for State of Good Repair discretionary grants. This program was authorized in the FAST Act. The Partnership program will award grants to repair, replace, or rehab qualified railroad assets to reduce the state of good repair backlog on Amtrak's Northeast Corridor (NEC) and intercity rail infrastructure as well as publicly owned passenger rail equipment and facilities. Grant applications are due by March 18, 2019. Here is a [link](#) to the FRA press release and a [link](#) to the November 16 NOFO.
- The Federal Highway Administration (FHWA) published a notice in the November 14 Federal Register of proposed changes to its regulations governing the use of patented or proprietary products on federally funded projects. Here is a [link](#) to the notice. The deadline for comments is January 14, 2019. Current regulations prohibit FHWA participation in the cost of patented or proprietary products or materials except when: (1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items; (2) a State DOT certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or (3) a patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes. Some State DOTs and stakeholders have argued that the current rules unnecessarily limit the ability to utilize new and innovative materials. FHWA is asking for public feedback on options to change the regulation.

Additional information and more details about the elections results, including ballot initiatives, and their potential impact will be distributed later this week.