



## Washington Update

PREPARED BY CATHY CONNOR  
MANAGER OF GOVERNMENT AFFAIRS

**PARSONS  
BRINCKERHOFF**

### September 15, 2014

Congress is in session for only two short weeks in September – last week and this week - before recessing on Friday until after the November 4 elections. Given the limited amount of time, there is very little significant legislation that can be passed other than a very few “must do” bills, such as the FY’15 Continuing Resolution (CR).

The FY’15 fiscal year begins in two weeks on October 1 and Congress has not completed any of the 13 federal agency annual appropriations bills. Last week, the House leadership introduced a short-term, ten-week CR.

The House CR provides current level funding for all federal programs, including US DOT, through December 11, 2014. Congress will have to address a longer term CR or other options after the November 4 elections in a Lame Duck session. The CR is generally “clean”, meaning it does not include extraneous program or policy provisions, although it does include an extension of the Export-Import Bank authorization through June 15, 2015.

Under a short-term CR, US DOT usually immediately distributes formula funding to recipients on a pro-rata basis, however FHWA and FTA usually do not allocate funds for discretionary programs, such as the New Starts/Small Starts programs, until a longer-term CR has been approved.

The House had hoped to quickly and easily pass the CR last week, however, the White House asked the GOP leadership to delay consideration of the bill while negotiations take place about adding authorization of “use of force” and funding for potential military strikes and other actions against ISIS in the Middle East.

The House hopes to vote on the bill tomorrow, however, since Congress plans to adjourn this Friday for the elections, that does not leave much wiggle room for any controversies or disagreements. The Senate must pass the bill after the House approves it in order to avoid a government shutdown like what occurred last year.

## TIGER Grants

On Friday, September 12, US DOT Secretary Anthony Foxx announced the latest round of TIGER discretionary grant awards. Grants for FY’14 totaling \$584M (the \$600M appropriated minus \$16M for administrative costs) were awarded to 72 projects in 46 states and DC. The Department received 797 eligible applications requesting \$9B for this very popular program. The largest awards were three \$25M grants to projects in Maine, New



York City and Richmond, VA. The smallest was \$100,000 to a project in St Paul, MN. The past practice of making grants across the modal spectrum, including freight, was followed.

This is the sixth round of Transportation Investment Generating Economic Recovery (TIGER) grants to be awarded since the grants were first funded in the 2009 ARRA stimulus bill. The FTA Notice of Funding Availability required that a minimum of \$120M be set-aside for rural areas and up to \$35M for planning projects. The maximum federal share is 80% with up to 100% for rural projects. Eligible projects include highway, bridge, public transportation, passenger and freight rail, bike/pedestrian, and port infrastructure projects.

Here is a [link](#) to the list of projects which were awarded grants, a [link](#) to the text of the US DOT press release, and a [link](#) to additional TIGER information.

## House Rail Reauthorization Bill

Last week, the bi-partisan leadership of the House T&I Committee introduced a four-year passenger rail bill, HR 5449, the Passenger Rail Reform & Investment Act of 2014 which reauthorizes the PRIIA act which expired last year on September 30, 2013. Although T&I Committee Chairman Bill Shuster (R-PA) and Railroad Subcommittee Chairman Jeff Denham (R-CA) have been working on and promising a PRIIA reauthorization bill for well over a year, it was not expected that they would introduce the bill right as Congress is adjourning. Although the Committee has scheduled a mark-up of the bill this week on Wednesday, there is not enough time for floor action before they recess on Friday and little chance for action in the Lame Duck session. That means the bill will have to be re-introduced in the new 114<sup>th</sup> Congress next year. It is somewhat unusual for a bill to be introduced without a clear and timely path for floor consideration. This gives potential opponents time to scrutinize and criticize various provisions.

It is also unexpected that the bill was introduced on a bi-partisan basis with the Ranking Democrats, Nick Rahall (D-WV) and Corrine Brown (D-FL), signing onto the bill. This is because it was originally predicted that the Republican-drafted bill would slash funding for Amtrak, possibly even eliminating all federal funding for long distance routes. However, the bill authorizes \$1.7B per year for Amtrak, increasing to \$1.8B by FY'18, which is approximately the current appropriated level of funding, although the funding levels are less than what was authorized (but never funded) in the original 2008 PRIIA bill and less than Amtrak has requested.

The bill proposes to keep Northeast Corridor operating profits on the Corridor, streamline environmental reviews, accelerate project delivery, encourage private sector involvement, put more responsibility on states to fund local routes, expedite RRIF loans, and accelerate private development around stations. The bill does not authorize any funding for non-Northeast Corridor high-speed rail projects.



The Senate Commerce Committee is also working on its version of a PRIIA reauthorization bill, but committee leaders do not plan to introduce a bill until next year.

Here is a [link](#) to House T&I press release, a [link](#) to an overview of the bill and a [link](#) to the full bill text.

## Other Legislation

Several other transportation related bills were also introduced last week, however, like the House passenger rail bill, it is highly unlikely these bills will pass in this session of Congress. The bills will need to be reintroduced once the 114<sup>th</sup> Congress convenes in January.

Senators Rockefeller (D-WV) and Thune (R-SD), the bi-partisan leaders of the Senate Commerce Committee, introduced a bill to reauthorize the Surface Transportation Board (STB), the Surface Transportation Board Reauthorization Act of 2014, S. 2777. The bill aims to improve the STB by making it more efficient and accessible to both shippers and the freight railroads. Both Senators expressed concerns about serious freight rail service delays and backlogs stemming from winter weather and increased cargo volumes including the movement of crude oil by rail. The bill would expand the STB's authority so it can launch its own investigations before a complaint is filed and increase its productivity by improving rate review timelines and alternative dispute resolution practices. The STB would be separated from US DOT, expanded in size, and permitted to hold closed work sessions, all aimed at increasing its efficiency.

The Committee held a [hearing](#) last week on the bill to hear from stakeholders and has scheduled a mark-up for September 17. Here is a [link](#) to the text of the bill, a [link](#) to a section by section summary, and a [link](#) to the Committee's press release.

Senators Schumer (D-NY), Gillibrand (D-NY), Blumenthal (D-CT), and Murphy (D-CT) have introduced a passenger rail safety bill. The legislation, the Rail Safety Improvement Act of 2014, S. 2784, stems from the Senators serious concerns about recent Metro-North accidents in NY and CT, but it would impact all passenger railroads, including Amtrak, and commuter rail across the country. The bill keeps intact the 2015 deadline for implementing Positive Train Control (PTC) technology. It authorizes \$3B for the Railroad Safety Technology Grant Program to assist with PTC implementation. Here is a [link](#) to a press release issued by Senator Schumer with more details and a [link](#) to the text of the bill.



## Other Issues

The White House has formally nominated Therese McMillan to be the new Federal Transit Administrator, replacing Peter Rogoff who has been confirmed as the US DOT Under Secretary for Policy. Therese currently holds the position of FTA Deputy Administrator and is serving as FTA Acting Administrator. It is unclear if the Senate will vote to confirm her nomination before the end of the session. FRA Deputy Administrator Karen Hedlund resigned from the agency as of last week. There is no word on who may be nominated to take her place and she has not announced future plans. Karen has served at US DOT since 2009, initially as Chief Counsel of FHWA before joining FRA where she led the agency's high-speed rail efforts. Carlos Monje has been nominated to be the new US DOT Assistant Secretary for Policy. This position has not been filled on a permanent basis since Polly Trottenberg was elevated to be Under Secretary for Policy before leaving the Department for New York City. Carlos is currently Special Assistant to the President and Chief of Staff of the White House Domestic Policy Council.

On August 25, FTA released its final Joint Development Circular. It provides guidance to FTA grant recipients on how to use FTA funds or FTA-funded real property for joint development with the private sector. It incorporates provisions from MAP-21 and is effective as of October 1. Here is a [link](#) to the text of Circular 7050.1 and the Federal Register notice.

On September 10, FHWA announced the publication of the Final Core Toll Concessions Public Private Partnership (P3) Model Contract Guide. Here is a [link](#) to the Federal Register notice and a [link](#) to the actual guide. FHWA is also preparing a similar guide to availability payment projects.

On September 5, FHWA published its final rule for Value Engineering (VE) for road and bridge projects. The new rule implements changes made to the VE requirements in MAP-21. The rule increases project thresholds that trigger a VE analysis (from \$25M for highway projects on the NHS to \$50M), eliminates the VE analysis requirement for design-build projects, and defines the requirements for state DOTs to establish VE programs. The rule is effective as of October 6. Here is a [link](#) to the Federal Register notice.