



ADDENDUM

**Virtual Meeting of the Connect Transit Board of Trustees
October 27, 2020 – 4:30 P.M.
351 Wylie Drive – Training Room
Normal, Illinois 61761**

- E. Consent Agenda
 - 4. Cardinal Infrastructure Federal Report

Federal Update for Connect Transit
Prepared by Cardinal Infrastructure
October 27, 2020 Board Meeting
Prepared on October 23, 2020

Appropriations

On September 30th, by a vote of 84-10, the Senate passed an appropriations continuing resolution (CR), funding the government at FY 2020 levels through December 11, 2020. The CR also included a one-year extension of the surface transportation bill, the FAST Act. While the President signed the CR in the early hours of October 1st following his return from a campaign event in Minnesota, the federal government was not shutdown per direction from the White House Office of Management and Budget.

The one-year extension of the FAST Act means the surface transportation programs are authorized to receive funding until September 30, 2021 and funding was included to provide needed revenues for the Highway Trust Fund and Mass Transit Account. Like all other Federal programs, under the current CR, funding has been appropriated until December 11, 2020, and would therefore require additional action by Congress on an FY 2021 appropriations measure.

For context, on July 31st, the House passed their version of the Fiscal Year (FY) 2021 transportation appropriations bill. The transportation appropriations measure totals \$107.2 billion in total budgetary resources for U.S. DOT, an increase of \$21.1 billion above FY 2020 and \$19.4 billion above the President's budget request. On July 30th, the White House issued a veto threat to the House appropriations bill in its statement of administration policy (SAP). While the SAP makes note of the appropriations package exceeding Congress' two-year budget agreement spending limits, it specifically notes objections to the transportation appropriations bill, specifically opposing \$26 billion in U.S. Department of Transportation (U.S. DOT) emergency spending and the mask mandate applicable to airlines, certain public transit, and Amtrak. The Senate never took action to advance its version of the bill and thus the need for a stop gap measure.

COVID-19 Relief Package

As of the writing of this Federal Update, Senate Majority Leader Mitch McConnell tried to put two bills on the Senate floor; one for the Paycheck Protection Program, and a second bill to be nearly identical to the Senate GOP's \$500 billion bill that failed to advance last month in a 52-47 vote (60 votes required). Democrats blocked both bills and Speaker Pelosi voiced her opposition. This bill did not have any direct funding for public transit or state and local governments.

While Senate Republicans attempted to advance bills that would have almost certainly not passed Congress, and as they continue to voice opposition to a high figure relief bill, Speaker Pelosi and Treasury Secretary Mnuchin continue to negotiate on a relief package. Some say they continue to speak in earnest, others say that neither wants to be reported to have walked away from negotiations. Either way, White House Chief of Staff Mark Meadows reported that the latest figure offered to Speaker Pelosi was \$1.9 trillion, with the Speaker standing firm on at least \$2.2 trillion.

On October 18th, Speaker Pelosi sent a 'Dear Colleague' to House Democrats, stating, "I am optimistic that we can reach agreement before the election. To that end, we are writing language as we negotiate the priorities, so that we are fully prepared to move forward once we reach agreement." The Speaker, having listed several significant sticking points in the White House proposal, along with Leader McConnell's unwillingness for a high figured bill, points to a nearly unworkable path to getting a deal passed by Congress and signed by the President before November 3rd. Furthermore, passing a bill after the elections (during the lame-duck session) is a toss-up with new political uncertainties that could keep a package at bay until there is a new Congress or new Administration.

For context, on October 1st, with a vote of 214- 207, the House passed its revised Heroes Act totaling \$2.2 trillion in COVID-19 supplemental relief spending. The bill contains the industry request for \$32 billion to the Federal Transit Administration (FTA) for public transit funding. Notably, the legislation did not include legal liability protections for COVID-19 related claims.

The \$32 billion in public transit funding is divided as follows:

- \$18.5 billion to be allocated under 5307 and 5337 (state of good repair) in accordance with FY 20 appropriations. If amounts allocated to a recipient under this bill and the CARES Act together exceed 100% of the recipient's FY 2018 operating costs, the excess is allocated to others in this category.
- \$10 billion to be distributed under the Emergency Relief Program for recipients that need additional funding to maintain operations. The Secretary of Transportation is required to give priority to recipients that received less than 100% of their 2018 operating expenses from CARES Act and the HEROES Act formula funds, as well as to recipients with the largest revenue loss as a percentage of the agency's 2018 operating expenses.
 - The federal share for these funds can be up to 100%. The funds are to be directed to payroll and public transit "to the maximum extent feasible" unless the recipient certifies to the Secretary that the recipient has not furloughed employees. The funds may be used to pay contractors if the contractor has continuously retained its full and part time workforce or for payments made for employees brought back to positions after a furlough.
- \$2.5 billion in Capital Investment Grant funds, with \$1.95 billion in grants to recipients that received an allocation of FY 19 or FY 20 funds prior to enactment of the bill. The funds are to be provided based on a proportion of a recipient's local share as compared to the local share among all recipients in such fiscal year. Projects that are currently open for revenue service are not eligible. Of the remaining amount, \$400 million is provided for recipients that receive an allocation of FY 19 or 20 funds after enactment of the bill, and \$150 million is provided for Small Starts projects that need funding to complete the project, to be distributed through a formal notice of funding opportunity.
- \$250 million for 5310 (Enhanced Mobility of Seniors & People with Disabilities program) and \$750 million for 5311 (formula grants for rural areas).

The state and local funding is distributed as follows:

- \$238 billion to states based on their share of unemployed workers.
- \$179 billion to local governments, evenly divided between municipalities and counties; of which, \$89.5 billion to counties based on population and \$89.5 billion to municipalities using a modified CDBG formula (\$62.65 billion for municipalities of at least 50,000 in population and \$26.85 billion for municipalities with populations less than 50,000).
- The bill also expands the use of CARES Act Coronavirus Relief Funds for state, local and tribal governments, to be used for covering lost, delayed, or decreased revenue stemming from the COVID-19 pandemic, and extends the date of expenditures for funds to December 31, 2021.

Federal Emergency Management Agency (FEMA) program amendment:

- The bill clarifies that eligible FEMA Public Assistance Program (and other Stafford Disaster Relief and Emergency Assistance programs) costs for reimbursement include personal protective equipment and critical supplies for public transportation, COVID-19 response training, providing public guidance and information, and establishing and operating virtual services.

Public Transportation COVID-19 Research Demonstration Grant

The FTA announced the availability of \$10 million under a new program, the Public Transportation COVID-19 Research Demonstration grant program. According to the press release, the grants are intended for use to "develop, deploy, and demonstrate innovative solutions that improve the operational efficiency of transit agencies, as well as enhance the mobility of transit users affected by the COVID-19 public health emergency."

The notice of funding opportunity provides that eligible projects include vehicle, facility, equipment and infrastructure cleaning and disinfection; exposure mitigation measures; innovative mobility such as contactless payments; and measures that strengthen public confidence in transit services. The maximum federal share of project costs is 100%. Applications are due by 11:59 p.m. ET, Monday, November 2, 2020.

Mask Mandate Petition

The U.S. Department of Transportation (U.S. DOT) decided not to move forward on a formal rulemaking requiring masks on public transportation following a petition from the Transportation Trades Department, AFL-CIO. U.S. DOT General Counsel and Acting Deputy Secretary Steven Bradbury said a rulemaking is "not warranted" and illustrated the steps U.S. DOT has taken to "educate transportation stakeholders and promote...[CDC and OSHA] recommendations to ensure they are observed in our transportation systems." He also cited existing policies from state and local governments, and private sector transportation entities, as well as the "consideration of non-regulatory solutions."

Disadvantaged Business Enterprises

The House Transportation and Infrastructure Committee held a hearing entitled, "Driving Equity: The U.S. Department of Transportation's Disadvantaged Business Enterprise Program." In Chairman DeFazio's (D-OR) opening remarks, he said, "Discrimination is still terribly real in America, and if the events of 2020 have not proven that convincingly enough, I'm confident the overwhelming evidence we have examined for this hearing will at least shut the door on the question as it relates to Federally-assisted transportation contracts."

There was widespread and bipartisan support for the DBE program during the hearing, though comments were made by witnesses on how to improve upon its implementation. For example, hearing witness Geri Boyer, on behalf of the American Council of Engineering Companies said, "There is a lack of a unified approach for DBE certification. States require applications at different points of the year, which gives unnecessary work for the firm and the public agency."

A good deal of time was spent discussing the process of graduating from the DBE program. Responding to Highways and Transit Ranking Member Davis' (R-IL) question on leaving the DBE program, Geri Boyer said, "We need to look at how to stabilize as a firm that leaves the DBE program. The idea of a unified certification is important for our nation. I work in 17 states and need 17 different certifications. Graduation should be the goal, but that is not possible for most DBE firms." Witness Dr. Wainwright of NERA Economic Consulting said, "We need greater spillover of the DBE program into the private sector. The DBE program is only affecting the 20% the public sector controls."

Congressman Palmer (R-AL) brought up reports of DBE firms limiting their contract dollars to remain in the DBE program, and espoused term limits for DBE firms. Geri Boyer responded, "It's the fear that overcomes a small business to step out of the program. There needs to be a ladder for graduation."

Clean Economy Jobs and Innovation Act

The House passed its Clean Economy Jobs and Innovation Act, to invest in clean energy and clean energy jobs. The bill will reauthorize the Diesel Emissions Reductions Program, increasing the annual appropriation from \$100 million to \$500 million annually from FY 2021-2025. The bill amends the Energy Independence and Security Act of 2007, which among other provisions, includes a Plug-In Electric Drive Vehicle Program for competitive grants to state and local governments, MPOs, and others. The bill authorized \$90 million per year for FY 2008-2012. This amendment would authorize \$2 billion per year for FY 2021-2025. The amendment would expand the eligibility of qualified electric transportation projects to include:

- Equipment for medium- and heavy-duty vehicles, including at depots and in-route locations;
- Multi-use charging hubs used for multiple forms of transportation;
- Medium- and heavy-duty vehicle smart charging management and refueling; and
- Battery recycling and secondary use, including for medium- and heavy-duty vehicles.