



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

MEETING DATE: July 15, 2022

AGENDA ITEM 7.2

From: Bill Thomas, Executive Director

Monthly update/messages from RTC Executive Director Bill Thomas on federal matters related to the RTC – *no action will be taken on this item.*

ATTACHMENT

- A. Written report prepared by Cardinal Infrastructure and Thompson Coburn

**Federal Update for the Regional Transportation Commission of Washoe County
Prepared by Cardinal Infrastructure and Thompson Coburn
July 15, 2022 Board Meeting
Prepared July 11, 2022**

Appropriations

The House Appropriations Committee approved the Fiscal Year (FY) 2023 Transportation, and Housing and Urban Development, and Related Agencies (THUD) spending bill in a 32-24 vote. The measure provides \$105.4 billion in total budgetary resources to USDOT, with much of the funding supporting infrastructure investments authorized in the *Bipartisan Infrastructure Law* (PL 117-58). The spending bill also includes \$3.7 billion for 1,827 Community Project Funding requests submitted by 331 Members of Congress. The full House of Representatives will consider the measure later this summer. More specifically there is:

- \$17.5 billion for FTA, including \$13.6 billion for Transit Formula Grants to expand bus fleets and increase the transit state of good repair; \$3 billion for Capital Investment Grants to create new transit routes, and \$646 million for Transit Infrastructure Grants to assist transit agencies in purchasing low and no emission buses and more,
- \$18.7 billion for FAA, \$193 million above fiscal year 2022, including \$1.6 billion for Aviation Safety and \$273 million for discretionary Airport Improvement Grants and projects,
- \$61.3 billion for FHWA formula programs funded from the Highway Trust Fund, including \$1.8 billion for discretionary highway programs and projects,
- \$3.8 billion for FRA, an increase of \$501 million above fiscal year 2022, which includes \$555 million for the Federal-State Partnership for Intercity Passenger Rail grant program, \$630 million for CRISI grants,
- \$2.3 billion for Amtrak — \$14 million above fiscal year 2022 — including \$882 billion for the Northeast Corridor and \$1.5 billion for National Network grants,
- \$874 million for FMCSA,
- \$1.2 billion for NHTSA
- \$987 million for MARAD,
- \$775 million for “National Infrastructure Investments,” which is what the Administration calls RAISE, same amount as in fiscal 2022,
- \$100 million for the new Thriving Communities program created last year aimed at making transportation cleaner and more affordable and improving connections to health care, education and food security, among other purposes.

RTC Washoe had a few projects advanced by the Nevada delegation.

- \$4,000,000 for Lemmon Drive supported by Rep. Amodei. This project made it in the House THUD bill approved by the Committee on June 23rd and is now awaiting a vote on the full House floor.
- \$4,500,000 for Villanova Maintenance Facility supported by Sen. Rosen and Sen. Cortez Masto. The Senate has yet to announce their markup schedule for Committees and we will know where this project stands after those are complete.

The House Rules Committee announced that they will be combining the fiscal 2023 Transportation-HUD appropriations with five other FY23 spending bills and moving the combined package to the House floor late this week or next week.

Infrastructure Law Implementation

FHWA announced a Notice of Proposed Rulemaking (NPRM) on proposed minimum standards and requirements for projects funded under the **National Electric Vehicle Infrastructure (NEVI)** Formula Program. The proposed rule would establish the groundwork for states to build federally-funded charging station projects across a national EV charging network, an important step towards making electric vehicle charging accessible to all Americans.

USDOT and the Department of Housing and Urban Development (HUD) established the **Thriving Communities** program authorized by the *Consolidated Appropriations Act, 2022* (PL 117-103) to provide technical assistance and capacity building resources to communities for infrastructure projects. USDOT developed a Navigator with a library of technical assistance resources available at the agency. In the fall, USDOT and HUD will issue Notices of Funding seeking providers of technical assistance. Eligible applicants for assistance from these “Capacity Builders” will include units of state, local, and tribal governments; metropolitan planning organizations; and transit agencies, with priority for rural, tribal, and other disadvantaged communities.

The Federal Railroad Administration (FRA) solicited stakeholder feedback on proposed guidance that will steer the agency’s development and implementation of **railroad capital projects** funded by the BIL. The guidance defines stages in the railroad capital project lifecycle and project development process and describes project management tools, processes, and documentation that FRA will require from applicants. Comments on the guidance are due on August 12, 2022.

Grant Opportunities (In Order of Due Date)

FTA has issued Notice of Funding Opportunity (NOFO) for the Fiscal Year 2022 (FY22) Pilot Program for **Transit-Oriented Development Planning (TOD Pilot Program)**. There is approximately \$13.2M in total program funding. For context, FTA awarded 20 grants in the last round of the program totaling approximately \$11 million with a minimum award size of \$300,000 and a maximum award size of \$920,000. Funds are available for obligation for four fiscal years after the fiscal year in which the award is announced. There is a 20 percent nonfederal cost share requirement. **The deadline to apply is July 25, 2022.**

FHWA opened a call for applications through a NOFO for the competitive **Bridge Investment Program** established by the Bipartisan Infrastructure Law. The program will provide \$12.5 billion over five years, with nearly \$2.4 billion available in FY22 to help plan, replace, rehabilitate, protect, and preserve some of the nation’s largest bridges. This competitive grant program comes on top of more than \$27 billion in formula bridge funding DOT announced earlier this year. **July 25, 2022 is the deadline.**

USDOT issued a NOFO for FY22 **University Transportation Centers (UTC)** Program. There is \$90 million in total program funding. DOT expects to award grants for up to 5 National UTCs, 10 Regional UTCs, and 20 Tier 1 UTCs. The agency will make award of \$4 million each for National UTCs, \$3 million each for Regional UTCs, and \$2 million each for Tier 1 UTCs. **The deadline to submit a Letter of Intent (LOI) is July 1, 2022, and the deadline to submit an application is August 25, 2022.**

USDOT issued Notice of Funding Opportunity (NOFO) for the Fiscal Year 2022 (FY22) **Safe Streets and Roads for All (SS4A)** Grant Program. The purpose of the program is to support planning, infrastructure, behavioral, and operational efforts to prevent death and serious injury on roads and streets involving roadway users. There is \$1B in total program funding. There is a 20 percent nonfederal cost share requirement. **The deadline to apply is September 15, 2022.**

FRA issued a NOFO for the new **Railroad Crossing Elimination (RCE)** Program authorized by the *Bipartisan Infrastructure Law* (PL 117-58). The purpose of the RCE program is to support highway-rail and pathway-rail grade crossing improvement projects that improve the safety and mobility of people and goods. FRA will award approximately \$573.3 million in total program funding. The minimum award size is \$1 million with an exception for planning projects. There is no maximum award size; however, no more than 20 percent of total funding may be awarded to projects in a single state. FRA will also hold a webinar on the program on July 14. **The deadline to apply is Oct 4, 2022.**

USDOT launched the **Reconnecting Communities Pilot (RCP)** Discretionary Grant Program, a new opportunity authorized by the *Bipartisan Infrastructure Law* (PL 117-58). The agency will award \$195 million in total program funding for Planning Grants and Capital Construction Grants to support the restoration of community connectivity through the removal, retrofit, and mitigation of transportation facilities that have created historic barriers to mobility, access, and economic development. DOT expects to award \$50 million in funding for RCP Planning Grants ranging from \$100,000 to \$2 million each. The agency will award \$145 million in funding for RCP Capital Construction Grants ranging from \$5 million to \$100 million each. **The deadline to apply is Thursday, October 13, 2022.**

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Build Back Better aka Budget Reconciliation

Senate Democrats are preparing for possible action on a party-line climate, tax and prescription-drugs bill after the latest round of talks between Senate Majority Leader Chuck Schumer and Sen. Joe Manchin (D-WV). Manchin and Schumer met twice in mid-June to discuss the bill, and have sent some language to the Senate Parliamentarian to kickstart the rules process. Sen. Ron Wyden (D-Or), who chairs the tax-focused Finance Committee said he hopes to “get this done before the August break.”

The restarted negotiations between Senate Majority Leader Chuck Schumer and Senator Joe Manchin on possible fiscal year 2022 budget reconciliation legislation will go into overdrive this week, even though Schumer may be physically absent this week because he tested positive for COVID. On July 6, the Senate Finance Committee posted text of Medicare prescription drug purchasing legislation, to be part of the downsized reconciliation package, which the Congressional Budget Office says would reduce deficits by \$288 billion over 10 years. A package of tax increases is also coming soon, along with what is supposed to be over \$300 billion of climate-related spending. *Still unknown: how much of the \$44 billion in transportation-related funding from the December 2021 draft Senate version of the bill will be included with that climate spending, and whether or not a Manchin-approved bill will include the tax credits from the House bill to subsidize electric vehicle purchases by consumers.*

NTD Reporting Changes

FTA is seeking public comment on five proposed NTD reporting changes and clarifications. These proposals are based on changes to Federal transportation law made by the Bipartisan Infrastructure Law. The goal is to bring all agencies up to speed with best practices and have consistent data collection procedures around the country. Fortunately, RTC has already begun tracking the data requested in the changes so they will have it available when requested by FTA. RTC will only need to adjust their emergency contact on the P-10 form and be prepared to submit the data they already collect to FTA when it releases guidance on how to do so.

DOT Issues Another GHG Measure Rule for State DOTs

On July 7, USDOT released a new proposed rule would require state DOTs and MPOs that have National Highway System mileage within their geographic boundaries to “establish declining carbon dioxide (CO₂) targets and to establish a method for the measurement and reporting of greenhouse gas (GHG) emissions associated with transportation under Title 23, United States Code (U.S.C.)” The new rule is similar to a GHG performance measure rule proposed by the Obama Administration in April 2016 which was later withdrawn by the Trump Administration in May 2018 after serious debate over whether or not DOT had the legal authority to issue the rule. Section 30801 of the Senate EPW Committee’s proposed reconciliation title in the December 2021 draft bill would have given explicit legal authority to DOT to issue such a rule, and if the GOP takes control of either or both chambers of Congress this fall, you can expect amendments in the FY 2024 appropriations bills to prevent this rule from moving forward. Comments are due by August 22, 2022

Supreme Court Rulings

As the Supreme Court’s 2022 term came to an end, the Court released multiple significant decisions involving immigration, religious freedom, and environmental protections. More specifically, the Court ruled in a 6-3 decision on **West Virginia v. Environmental Protection Agency** to limit the power and authority of the EPA to regulate greenhouse gas emissions from fossil-fuel power plants and address the impacts of climate change under the *Clean Air Act (CAA)*. Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, Amy Coney Barrett joined Chief Justice John Roberts in writing the majority opinion where he states that, “...something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to “clear congressional authorization” for the power it claims.” Justice Elena Kagan, joined by Justices Breyer and Sonia Sotomayor, wrote the dissenting opinion in which she states that, “The Court appoints itself—instead of Congress or the expert agency—the decision maker on climate policy. I cannot think of many things more frightening.”

From *Railway Age*...”The case turned on *Major Questions Doctrine* that the dissenting justices said was the first time the Court used the term. Although Executive Branch agencies headed by single administrators reporting to the President were singled out—the EPA and FRA among them—agencies such as the STB, whose members have decision-making independence, may not be excluded from the ruling’s scope. More consequential is that while many conservatives hoped the SCOTUS would do more to “destroy the administrative state,” the Court was less aggressive. It drew a bright line between regulatory agency rulemakings having significant economic and political impact, and those less impactful.

The Court termed the former “major questions” on which Congress must “speak clearly” before granting a regulatory agency authority to, in the words of one activist, “change the plot line of its governing statute.” The Court’s majority assailed “agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.”

A logical conclusion—for now—is that so long as the STB and FRA do not stray from functions Congress clearly delegated to them—in violation of the now established *Major Questions Doctrine*—their rulemakings should be safe in judicial review. That presumed protection flows from the so-called *Chevron Doctrine*, which the SCOTUS majority left intact even though several of the conservative justices have attacked it on prior occasions.”