



Potomac Partners DC

Monthly Legislative Report – July 2018

July Advocacy Meetings

Congressman Mario Diaz-Balart (R-FL) – We met with Congressman Diaz-Balart, Chairman of the House Transportation, Housing and Urban Development (THUD) Appropriations Subcommittee, and his senior staff to discuss FY19 appropriations. We discussed the status of the OC Streetcar. We also discussed funding for FAST Act authorized programs in the FY19 THUD appropriations bill. We also discussed the timeline for the FY19 THUD bill and the possibility for opportunities during any conference negotiations or minibus packages.

Senate Banking Committee – We met with senior majority and minority staff on the Senate Banking, Housing, and Urban Affairs Committee to discuss mass transit programs. We discussed the OC Streetcar and gave an update on our discussions at the FTA and how continued delays by the administration will increase project costs.

Senate Appropriations Committee – We met with senior staff on the Senate THUD Appropriations subcommittee (Majority) to discuss the FY19 appropriations process. We discussed the timeline for the Senate THUD bill in the Senate that they hope to have finalized the first week of August, and the prospects of a minibus that could pass both chambers and be signed into law. We also discussed the OC Streetcar and the need for an FFGA at FTA and possible language in the THUD appropriations bill that would expedite the process at FTA.

Senate Commerce Committee – We met with senior staff on the Senate Commerce, Science and Transportation Committee (Majority) to discuss the OC Streetcar and give an update on our efforts at the FTA. We also discussed the House's infrastructure proposal and how the Senate will view some of the possible streamlining reforms.

House Judiciary Committee – We met with senior staff on the House Judiciary Committee to discuss potential Congressional action regarding online sales tax post-Wayfair case. The staff shared with us that Chairman Bob Goodlatte (R-VA) wants to start from scratch, and that all previous legislation on this issue, pre-Wayfair decision, he considers obsolete. Issues that the staff believe could be addressed by Congress are 1) the issue of applying taxes retroactively, 2) the potential need to simplify the collection of internet sales tax, and 3) any unintended consequences of the decision or ripple effect such as the potential for states to make out-of-state retailers pay more than just a tax. They want to hear from a broad range of stakeholders and asked us to follow up in August. There is no timetable for any new legislation. Regardless, the future of any on-line sales tax will likely depend on the results of the midterm election and who controls Congress.

House Transportation and Infrastructure Committee – We met with staff on the House T&I Committee to discuss the Chairman’s infrastructure proposal prior to the formal release of the proposal on July 23rd. We discussed the possibility of seeing some of the reforms carry over into the next legislative session (detailed later in this report). We also provided an update on the status of the OC Streetcar’s FFGA at FTA.

Congresswoman Grace Napolitano – We met with senior staff in Congresswoman Napolitano’s office to discuss her language that would address the Aviation Fuel Tax issue. We also gave an update on our efforts to secure an FFGA at FTA for the OC Streetcar and discussed how additional delays are expected to increase project costs.

Chairman Jeff Denham (R-CA) – We met with Congressman Denham’s staff to follow-up on our discussions regarding the Placentia Metrolink Station. We also discussed the OC Streetcar and at the status of the FFGA at FTA.

Congressman Ed Royce (R-CA) – We followed-up with staff in Congressman Royce’s office to discuss the OC Streetcar. We discussed the OC Streetcar’s FFGA and gave an update on our conversations with the FTA and with Chairman Diaz-Balart. We discussed ways the Chairman can help press FTA for an FFGA.

Congressman Ken Calvert (R-CA) – We met with staff in Congressman Calvert’s office to continue our discussions on FY19 appropriations and support for the CIG program. We thanked the Congressman for his ongoing support on the Appropriations Committee and discussed progress on the FY19 bills. We also discussed Shuster’s infrastructure proposal with the Congressman’s staff.

Congressman Alan Lowenthal (D-CA) – We followed-up with Congressman Lowenthal’s senior staff to discuss the OC Streetcar and the need to press the DOT on the need for a timetable for an FFGA from DOT.

Congressman Carlos Curbelo (R-FL) – We followed-up with Congressman Curbelo’s staff to discuss Congressman’s legislation regarding the federal gas tax HR. 6463, “The Market Choice Act.” This bill would amend tax code to add tax equal to \$24/ metric ton of CO₂ (MMT) + annual increase of 2% + CPI. Would eliminate the federal gas tax. This legislation is not likely to be advanced this session of Congress. A PDF of the legislation is available [here](#) and a legislative memo summarizing the bill is available [here](#).

Senator Dianne Feinstein (D-CA) – We met with Senator Feinstein and her staff multiple times this month to discuss the Senate THUD Appropriations bill and the Senate’s outlook for passing the FY19 THUD Appropriations bill before the end of the fiscal year. We discussed the possibility of it being packaged into a minibus, and the prospects of that bill passing during August.

Chairman Sam Graves (R-MO) – We met with Chairman Sam Graves’ senior staff to discuss his recent conversation with Secretary Chao regarding the need for an expedited

FFGA for the OC Streetcar. We are regularly following up with the staff on progress at DOT. We also discussed Shuster's infrastructure bill proposal and next steps for the bill.

FY19 Appropriations and Budget Update

During the last week of July, the Senate begin preparing for floor consideration of their FY19 THUD appropriations bill. The bill was approved by the Senate Appropriations Committee 31-0. Senate Appropriations Committee Chairman Richard Shelby (R-AL) then announced that the Senate include the THUD bill in minibus package along with three other bills including (1) Interior-Environment; (2) Financial Services; (3) and Agriculture, Rural Development, and FDA. The Senate will use [HR 6147](#) as a legislative vehicle for theses 4 appropriations bills. This legislation comes on the heels of last month's passage of [HR 5895](#), a minibus package of three FY19 appropriations bills, which passed the Senate with the overwhelming support of 86-5.

Highlights from the Senate FY19 THUD Appropriations bill is as follows:

Department of Transportation

- \$26.6 billion in overall discretionary funding
- \$698 million below FY18 enacted
- \$1 billion – BUILD Grants (Better Utilizing Investments to Leverage Development)
 - Previously known as TIGER grants
- \$46 billion – Highway Trust Fund
 - Consistent with FAST Act levels
 - \$3.3 billion for additional highway programs
 - \$90 million to eliminate hazards at grade crossings
 - \$800 million for bridge repair
- \$17.7 billion – Federal Aviation Administration (FAA)
 - \$1 billion – NextGen programs (Air Traffic Control modernization)
 - \$750 million in additional funds for Airport Improvement Program (AIP)
- \$2.8 Billion – Federal Railroad Administration (FRA)
 - \$255 additional for Consolidate Rail Infrastructure and Safety Improvement Grants (CRISI)
- \$13.5 billion – Federal Transit Administration (FTA)
 - \$9.9 billion – Transit formula grants (Consistent with FAST Act levels)
 - \$2.6 billion – Capital Investment Grant (CIG) program
 - Fully funding all current FFGAs as well as new projects “that have met the rigorous criteria of CIG.”
- Safety – The legislation contains funding for the various transportation safety programs and agencies within the U.S. Department of Transportation. This includes \$956 million in total budgetary resources for the National Highway Traffic Safety Administration and \$667 million for the Federal Motor Carrier Safety Administration. The bill also includes \$275 million for the Pipeline and Hazardous Materials Safety Administration to help address safety concerns related to recent pipeline and crude oil by rail accidents.

It is worth noting that Senate appropriators from both parties have praised the bill citing bipartisan negotiations between Chairwoman Susan Collins (R-ME) and Ranking Member Jack Reed (D-RI). The Senate appropriators said they also worked with most of the Senators to process over 800 requests to the minibuss package and that both Republicans and Democrats are for the most part satisfied with the final version being brought to the floor. Not all the amendments will be included in the final bill. The consideration of the approved amendments will likely take until the first week of August. A list of some of those amendments to the THUD Section of the minibuss are as follows:

- **Baldwin #3506** (to Shelby #3399) – prevents any of the funding in the bill for the new state maritime academy training vessels to be used to buy any vessel not constructed in the U.S. or if the steel, iron, aluminum and manufactured products used are produced in the United States – filed on July 24, 2018.
- **Blumenthal #3526** (to Shelby #3399) – requires Amtrak to give fare discounts of at least 15 percent to members of Veterans Advantage – filed on July 24, 2018.
- **Blumenthal #3527** (to Shelby #3299) – sets aside no less than \$150 million of the bill's \$255 million in FRA CRISI grants for PTC implementation – filed on July 24, 2018.
- **Blumenthal #3617** (to Shelby #3399) – sets aside \$500 thousand of the combined Amtrak Northeast Corridor and Amtrak National Network appropriations to pay for fare discounts of at least 15 percent to members of Veterans Advantage – filed on July 26, 2018.
- **Blumenthal #3663** (to Shelby #3399) – sets aside \$500 thousand of the combined Amtrak Northeast Corridor and Amtrak National Network appropriations to pay for fare discounts of at least 15 percent to members of Veterans Advantage – filed on July 26, 2018.
- **Brown #3511** (to Shelby #3399) – requires DOT to submit a report on the need for repair on bridges on public roads that must identify each individual bridge in need of repair – filed on July 24, 2018.
- **Brown #3600** (to Shelby #3399) – requires Amtrak to use its National Network appropriation to “to restaff stations from which agents have been removed after January 1, 2018, and that averaged not less than 25 passengers per day during the period beginning on January 1, 2013 and ending on December 31, 2017” – filed on July 25, 2018.
- **Coons #3576** (to Shelby #3399) – provides that, notwithstanding any other provision of law, the deadline for expenditure (outlay) of FY 2012 TIGER grants shall be September 30, 2019 and the deadline for expenditure (outlay) of FY 2013 TIGER grants shall be September 30, 2020 – filed on July 25, 2018.
- **Coons #3649** (to Shelby #3399) – Amends the NII/TIGER/BUILD paragraph to provide that the deadline for expenditure (outlay) of FY 2012 TIGER grants shall be September 30, 2019 and the deadline for expenditure (outlay) of FY 2013 TIGER grants shall be September 30, 2020 – filed on July 26, 2018.
- **Cornyn #3495** (to Shelby #3399) – amends section 142(m) of the Internal Revenue Code to increase the cap on the aggregate amount of qualified highway or surface freight transfer facility private activity bonds from \$15 billion to \$20 billion – filed on July 24, 2018.

- **Cornyn #3496** (to Shelby #3399) – adds a provision very similar to section 165 of the House bill preventing any FTA funds from being used to award a contract to buy any mass transit or passenger rail or freight rail asset from a company owned or subsidized by the government of the People’s Republic of China (the Cornyn language appears to only apply to new contracts whereas the House language may have been retroactive as well) – filed on July 24, 2018.
- **Cruz #3624** (to Shelby #3399) – overwrites the provisions in the various bills restricting purchases of telco and IT equipment from ZTE, Huawei, and other Chinese manufacturers and replaces it with new language – filed on July 26, 2018.
- **Daines #3580** (to Shelby #3399) – provides that none of the funding in the bill can be used by FMCSA to implement the electronic logging device rule on trucks hauling livestock (similar to language in section 131 of the House bill) – filed on July 25, 2018.
- **Durbin #3422** (to Shelby #3399) – requires the Amtrak Inspector General, within 240 days of enactment of this Act, to update its March 28, 2008 report entitled “Results of Amtrak’s Poor On-Time Performance” – agreed to on July 24, 2018 by a roll call vote of 99-0.
- **Feinstein #3513** (to Shelby #3399) – amends the paragraph appropriating \$3.3 billion from the general fund for highways so that the funding can be used for any purpose eligible under 23 U.S.C. 133(b), not just (as the bill would have it) for the purposes listed in §133(b)(1)(A), so that the highway money could be used for mass transit, transportation alternatives, etc. – filed on July 24, 2018.
- **Feinstein #3514** (to Shelby #3399) requires DOT, when giving out NII/TIGER/BUILD grants for FY 2019, to distribute the funding in a way so that each state gets at least \$2 of grant money per capita, except where that would require funding a project without an acceptable technical rating – filed on July 24, 2018.
- **Feinstein #3515** (to Shelby #3399) – requires DOT to make publicly available the list of the merit-based technical ratings for all NII/TIGER/BUILD grants at least 30 days before making grants – filed on July 24, 2018.
- **Fischer #3492** (to Shelby #3399) – requires FMCSA, to the maximum extent possible, to ensure the safe and timely completion of the sleeper berth pilot program – filed on July 24, 2018.
- **Gardner #3516** – adds a new §40A to title 18 U.S.C. making it a federal crime to operate an unmanned aircraft to knowingly and recklessly interfere with wildfire suppression – filed on July 24, 2018.
- **Heller #3427** (to Shelby #3399) – amends 23 U.S.C. §127 to increase the maximum truck weight on Interstate highways above 82,000 pounds for battery-powered trucks by the difference between the weight of the battery and wiring system and the weight of a comparable diesel tank and fueling system (similar to sec. 127 of the House bill) – filed on July 24, 2018.
- **Heller #3428** (to Shelby #3399) – adds a section directing DOT to report to Congress on efforts by DOT “to engage with local communities, metropolitan planning organizations, and regional transportation commissions on advancing data and intelligent transportation systems technologies and other smart cities solutions” – filed on July 24, 2018.

- **Heller #3429** (to Shelby #3399) – requires DOT, when making INFRA grant selections under 23 U.S.C. §117, to “take into consideration the needs of projects of regional or national significance” – filed on July 24, 2018.
- **Inhofe #3480** (to Shelby #3399) – requires DOT to consult with the Corps of Engineers to “identify any existing authorities and any additional authorities that may be needed to leverage funds from Department of Transportation programs for purposes of inland waterway project costs” – filed on July 24, 2018.
- **Johnson #3434** – requires the FAA to provide air traffic services and aviation safety support for aviation events, including airshows and fly-ins, without the imposition or collection of any fee, tax, or other charge for that purpose” – filed on July 24, 2018.
- **Johnson #3436** – requires the FAA to report to Congress on the implementation of NextGen at commercial service airports in the U.S., including the relative completeness of NextGen installation at each individual airport – filed on July 24, 2018.
- **Kennedy #3641** (to Shelby #3399) – requires MARAD to report to Congress on on the training ship cadet-to-berth ratio at each State Maritime Academy – filed on July 26, 2018.
- **Klobuchar #3538** (to Shelby #3399) – amends the paragraph appropriating \$3.3 billion from the general fund for highways so that the funding can be used for any purpose eligible under 23 U.S.C. 133(b), not just (as the bill would have it) for the purposes listed in §133(b)(1)(A), so that the highway money could be used for mass transit, transportation alternatives, etc. – filed on July 25, 2018
- **Lee #3519** – prevents any funds in the Act from being used to enforce the Davis-Bacon Act or similar prevailing wage provisions on highway projects – filed on July 24, 2018.
- **McConnell #3645** (to Shelby #3399) – provides a temporary (FY 2019 only) truck weight waiver for certain roads in Kentucky (related to section 126 of the House bill)– filed on July 26, 2018.
- **Menendez #3529** – sets aside \$1.5 million of the Airport Improvement Grant limitation to provide reimbursement to airport sponsors affected by TFR’s that do not relate to President Trump – filed on July 24, 2018.
- **Menendez #3535** (to Shelby #3399) – requires that at least 50 percent of the bill’s NII/TIGER/BUILD grant funding go towards projects located in urban areas – filed on July 24, 2018.
- **Merkley #3486** (to Shelby #3399) – amends 49 U.S.C. §41731 to provide that (a)(1)(D) shall not apply to non-federal airports with high military use (presumably, some airport in Oregon) – filed on July 24, 2018.
- **Moran #3598** (to Shelby #3399) – sets aside \$50 million of the Amtrak National Network appropriation for “capital expenses related to safety improvements, maintenance, and the non-Federal match for discretionary Federal grant programs to enable continued passenger rail operations on long distance routes (as defined in section 24102 of title 49, United States Code) on which Amtrak is the sole tenant of the host railroad and positive train control systems are not required by law” and also prohibits Amtrak in FY 2019 from discontinuing any routes operated in FY 2018 – filed on July 25, 2018.

- **Moran #3665** (to Shelby #3399) – sets aside \$50 million of the Amtrak National Network appropriation for “capital expenses related to safety improvements, maintenance, and the non-Federal match for discretionary Federal grant programs to enable continued passenger rail operations on long distance routes (as defined in section 24102 of title 49, United States Code) on which Amtrak is the sole tenant of the host railroad and positive train control systems are not required by law” and also prohibits Amtrak in FY 2019 from discontinuing any service with certain conditions that make it sound like they are referring to the Southwest Chief – filed on July 26, 2018.
- **Murphy #3525** (to Shelby #3399) – reduces the 2019 NII/TIGER/BUILD grant appropriation from \$1.0 billion to \$500 million and uses that money to increase the 2019 appropriations for FRA Federal-State Partnership for State of Good Repair grants by \$250 million and for Amtrak Northeast Corridor grants by \$250 million – filed on July 24, 2018.
- **Paul #3543** (to Shelby #3399) – reduces every dollar amount in the entire bill by 11.48 percent – failed by roll call vote of 25-74 on July 25, 2018.
- **Peters #3504** (to Shelby #3399) – requires the FAA, within 2 years of enactment, to stop requiring the use of fluorinated chemicals in certain airport fire-fighting applications – filed on July 24, 2018.
- **Reed #3608** (to Shelby #3399) – prevents any funding in the bill from being used for the “implementation and furtherance of new policies” outlined in the Federal Transit Administration’s June 29, 2018 “Dear Colleague” letter on the Capital Investment Grants program – filed on July 25, 2018.
- **Reed #3609** (to Shelby #3399) – requires that the FTA treat the face value of federal direct loans for a CIG project as non-federal funding, that FTA not consider contingency funds as part of the project cost, and that FTA not perform a CIG risk assessment until the engineering phase unless requested by the sponsor – filed on July 25, 2018.
- **Reed #3610** (to Shelby #3399) – prevents any funding in the bill from being used to alter or rescind existing CIG program guidance – filed on July 25, 2018.
- **Sasse #3590** (to Shelby #3399) – requires DOT to amend the hours of service regulations to make several specific changes relating to drivers hauling livestock or insects – filed on July 25, 2018.
- **Thune #3441** (to Shelby #3399) – prevents any funds provided in the Act or in any subsequent Act to be used to implement, administer or enforce 49 U.S.C. §31136 or §31502 on drivers transporting agricultural commodities within 150 air-miles of the destination until DOT has promulgated a rule to extend the hours of service exemption for planting and harvesting times to a year-round exemption and extended the HOS exemption to a 150 mile radius – filed on July 24, 2018.
- **Udall #3413** (to Shelby #3399) – sets aside no less than \$50 million of the Amtrak National Network appropriation for “capital expenses related to safety improvements, maintenance, and the non-Federal match for discretionary Federal grant programs to enable continued passenger rail operations on long distance routes (as defined in section 24102 of title 49, United States Code) on which Amtrak is the sole tenant of the host railroad and positive train control systems are not required by law” – filed on July 24, 2018.

- **Udall #3414** (to Shelby #3399) – expresses the (non-binding) sense of the Congress that long-distance passenger rail networks should be sustained to ensure connectivity throughout the National Network – agreed to by a roll call vote of 95-4 on July 25, 2018.
- **Udall #3491** (to Shelby #3399) – amends 23 U.S.C. §207 to provide an extension to certain elements of the tribal transportation self-government program – filed on July 24, 2018.
- **Warner #3537** – sets aside no less than \$6M of FAA Operations funding for matching funds to commercial entities looking to validate technology for safe UAS integration into the NAS – filed on July 24, 2018.
- **Wyden #3471** (to Shelby #3399) – permanently amends 49 U.S.C. §31112 to add a truck length exemption for certain sugar beet trucks in Oregon (similar to sec. 134 of the House bill) – filed on July 24, 2018.

The House did not act on its FY19 THUD appropriations bill this month. Now that the House is in recess for the full month of August, the House THUD bill will not be approved until September when Members return to DC.

PTC Update

On July 25th the Department of Transportation's Federal Railroad Administration (FRA) released a report to congress entitled "Railroads' Progress Toward Implementation of Positive Train Control Systems" as required by statute. The report's formal date is July 1st, but it was just released. The report includes progress being made by railroads to implement PTC, but there is not much new information since the info is based on Q1 reporting's that were due by March 31st. New information should be available mid-August when the FRA updates their PTC progress dashboard showing the results of individual railroads as of June 30th. The report lists Metrolink as "conditionally certified".

Federal Action Regarding Online Sales Tax Post-Wayfair Case

Late last month the Supreme Court handed down a decision in favor of South Dakota (*South Dakota v. Wayfair*) supporting a state's right to charge tax on purchases made from out-of-state sellers even if the seller does not have a physical location or employees in the state. Since then, the House Judiciary Committee held a hearing on July 24th entitled "Examining the Wayfair decision and its Ramifications for Consumers and Small Businesses." A list of the hearing witnesses testimony and video of the hearing can be found [here](#).

Chairman Goodlatte said in his opening statements that he is concerned the decision could lead to a number of unintended consequences that potentially hurts small businesses. Some Conservative members of the panel also addressed concerns that Congress should be the sole regulator of interstate commerce and that states do not have the right to regulate interstate commerce. Democrats on the panel, however, supported not intervening at this time, agreeing with witnesses who testified that the costs

associated with sales tax compliance were not unreasonable and that, “there is no immediate problem”. We expect the House Judiciary Committee to hold additional hearings on this subject as Members of Congress watch states to see how they react to the ruling over the next 6-12 months. As mentioned earlier in our conversation with the Committee staff, they have no timetable yet for new legislation on this issue, and any legislation would likely have to wait until after the midterm elections.

House Infrastructure Proposal

Chairman Bill Shuster (R-PA) released his Infrastructure proposal in the form of a discussion draft late in the month on July 23rd. The bill’s text can be found [HERE](#). A section-by-section factsheet can be found [HERE](#). Politically, the bill is not expected to pass before the end of the 115th session. However, retiring Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) has said that he hopes this proposal will spur Congress to act to address the Highway Trust Fund’s solvency issue by enacting a 15 cent per gallon gas tax for the next ten years, until a per-mile user fee is implemented. Chairman Shuster said that he believes it would take Congress those full ten years to work out the details of a per-mile user fee system which he hopes could be used to fund the nation’s roads and bridges. Chairman Shuster said that it would also take a long PR campaign to build public support for a per-mile fee system. Other aspects, like the codification of the administration’s “One Federal Decision” guideline to speed project delivery and process and regulatory reforms for water projects could be carried over into the next session for consideration depending on which party controls the House after the elections.

Since the release of the discussion draft, Chairman Shuster has been meeting with other Members to gauge their reactions and that so far, the main area of resistance among Republicans is the gas tax increase. We will continue to monitor reactions and any new proposal ideas in response to the Shuster draft bill.

FAA Reauthorization Update

On July 25th Senate leaders began circulating a list of 46 amendments expected to be considered as part of a manager’s amendment for the Senate version of legislation to reauthorize the FAA ([S 1405](#)). As a reminder, the House passed their version of an FAA Reauthorization ([HR 4](#)) on April 4th of this year. Senate Commerce, Science and Transportation Committee Chairman John Thune (R-SD) has been working to build support for the Senate FAA bill this month as he and committee staff worked through a list of 100+ proposed amendments. It is possible that the bill could be heard on the Senate floor as early as next week since the Senate will not be leaving for August recess. Authorization for the FAA expires at the end of the fiscal year on September 30th.