

FAST ACT RAIL PROVISIONS

Allison I. Fultz

TRB 55th Annual Workshop on Transportation Law

Washington, DC

July 18, 2016



KAPLAN KIRSCH ROCKWELL

Introduction

- No major structural changes to programs following MAP-21
- First time rail policy has been included in surface authorization
 - High-speed, intercity, passenger, and freight rail funding
 - Amtrak organizational reforms,
 - Rail safety
 - Project financing and delivery

Introduction

- Funding programs provide cumulative opportunities for leverage
- Certain program and administrative functions have been explicitly coordinated
- Reinforces federal role in funding surface transportation projects
- Increased emphasis on multimodal projects

Funding/Financing

Fixed Guideway Capital Investment Grants (49 USC § 5309) – Sec. 3005

- Maximum federal share for New Starts FFGA now 60%
- Small Starts and Core Capacity projects remain at 80%
- Small Starts now included in program of interrelated projects under Capital Investment Grant program
- P3 pilot program – Federal share 25% or less; 8 projects to be selected
- Public transportation component of joint public transportation and intercity passenger rail projects eligible

Funding/Financing

Transportation Infrastructure Finance and Innovation Act (TIFIA) (23 USC § § 601-609) – Sec. 2001

- Provides secured loans, loan guarantees or lines of credit for surface transportation projects of national and regional significance
- TOD project cost threshold \$10 million rather than usual \$50 million
- Funds TIFIA at less than 1/3 the level of MAP-21 – but DOT has funding carryover balance from prior authorizations

Funding/Financing

Railroad Rehabilitation and Improvement Financing (RRIF) program reforms – Secs. 11601-11611

- \$35 billion authorized - \$2.7 billion in loans since 1998
- Provisions added to mirror TIFIA
- Project planning and design now eligible activities
- Loan repayment period tied to project completion and useful life of improvements – max 35 years

Funding/Financing

Railroad Rehabilitation and Improvement Financing (RRIF) program reforms – Secs. 11601-11611 – cont'd.

- Authorizes DOT to accept pledges of revenue streams and investment grade credit ratings in assessing loan risks and determining the amount of credit risk premium
 - Credit risk premium – Estimated cost to FRA of providing the financial assistance
- Authorizes master credit agreements to allow sequential loans

Funding/Financing

TOD financing

- Under RRIF - TOD that is physically or functionally related to a passenger rail or multimodal station eligible
 - Project cost must include private investment
 - Minimum 25% non-federal match
 - Program sunsets Dec. 2019

Funding/Financing

Nationally Significant Highway and Freight Projects (23 USC §117) – Sec. 1105

- Supports development of intermodal projects
- Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants
 - DOT has awarded grants to first group of applicants
- FY 2016 \$800 million to \$1 billion in FY 2020
- Eligible projects must cost more than \$100 million

Funding/Financing

Nationally Significant Highway and Freight Projects (23 USC §117) – Sec. 1105

- Rail-highway grade crossing, grade separation, freight rail, freight intermodal and intermodal projects “within the boundaries of a public or private freight rail facility”
- Maximum federal share for discretionary grant is 60%, but other federal sources may be used to bring total federal share to 80%

Funding/Financing

National Surface Transportation and Innovative Finance Bureau (49 USC §116) – Sec. 9001

- DOT one-stop-shop for funding, financing or technical assistance
- Will administer applications for
 - TIFIA
 - RRIF
 - Nationally Significant Freight and Highway Projects (NSFHP) program
 - Private Activity Bonds
 - State Infrastructure Bank program

Funding/Financing

Amtrak grants

- Allocates capital and operating grants between the Northeast Corridor and the National Network, consistent with Amtrak's primary business lines
 - Amtrak has some discretion to switch funds between accounts
- \$8.05 billion total from FY2016 to FY 2020

Funding/Financing

High-Speed, Intercity, Passenger and Freight Rail grants

- Consolidated Rail Infrastructure and Safety Improvements – Sec. 11102
 - Broadly-applicable to projects to enhance safety, efficiency and reliability of passenger and freight rail transportation systems
- Federal-State Partnership for State of Good Repair – Sec. 11103
 - Applies generally, but project must demonstrate enhancements to intercity passenger rail service or assets

Funding/Financing

High-Speed, Intercity, Passenger and Freight Rail grants, cont'd

- Restoration and Enhancement Grants – Sec. 11104
 - Operating assistance to initiate, restore or enhance intercity passenger rail service

Procurement

Buy America – Sec. 3011

- Incrementally increases minimum required domestic content for transit rolling stock to 70% by FY 2020
- FRA to issue regulations re: cutoffs
- New layer – cost of domestic iron or steel used in rolling stock frames and shells not produced in US if iron or steel is domestically produced
- Denial of waiver must be accompanied by DOT certification and list of known domestic manufacturers

Procurement

Joint Procurement – Sec. 3019

- Aimed at small systems, but available to systems of any size
- Allows aggregate rolling stock purchases through cooperative procurements administered by a state
- Pilot program – nonprofit cooperative purchasing organizations
- FTA Joint Procurement Clearinghouse – information repository and matchmaker

Liability Protections

Study on Evidentiary Protections – Sec. 3021

- Initially mandated in MAP-21
- Directs DOT to coordinate with TRB to evaluate whether it is in the public interest, to protect information collected, developed or used to evaluate and prioritize system risks and potential mitigation as part of a property's compliance with system safety plan requirements under 49 USC § 5329
- TRB report due June 2017

Liability Protections

Revision to passenger rail liability cap – Sec. 11415

- Increases maximum aggregate allowable award for all rail passenger claims from an accident
- \$200 million to \$295 million
- Adjustments at 5-year intervals must reflect CPI-Urban
- Applies to Amtrak and commuter rail operators

Safety/Operations

Positive Train Control (PTC) financing – Sec. 3028

- \$199 million in FY 2017
- PTC deadline Dec. 31, 2018
- 80% federal cap
- PTC funds may be used to pay credit risk premium of a RRIF loan being used to finance PTC installation
- PTC loans have priority within RRIF program

Safety/Operations

- Highway-rail grade crossing action plans – Sec. 11401
 - Requires certain states to assemble action plans for improving safety at highway-rail grade crossings
 - Requires DOT to evaluate impact of PTC on reduction of collisions at highway-rail grade crossings
- Locomotive cameras – Sec. 1141
 - Requires DOT to issue regulations to require all public intercity rail passenger and commuter rail passenger operators to install inward- and outward-facing image recording devices in all controlling operating compartments

Studies/Admin. Changes

Freight-Commuter Rail Shared-Use Study – Sec. 11311

- Evaluation of rail liability requirements and arrangements
 - Identification and resolution of passenger performance issues
- Expand statutory liability limits to additional parties?
- Revise current statutory liability limits?
- Adequacy of passenger rail operators' insurance – impose minimum coverage requirements?
- Establish alternative insurance models
- Study due by December 2018

Studies/Admin. Changes

Rail Project Delivery and Financing – Secs. 11501-11504

- Applies FHWA project expediting procedures to FRA project review
- Requires DOT to propose new categorical exclusions for railroad projects
- Requires DOT to provide exemption from historic preservation review requirements under Section 4(f) for railroad right-of-way similar to existing exemption for interstate highways

Studies/Admin. Changes

Amtrak program reforms – Secs. 11201-11215

- Requires Amtrak to develop a new accounting methodology to align revenues and costs of Northeast Corridor and National Network
- Requires Amtrak to study how to monetize right-of-way and real estate assets
- DOT must establish a State-Supported Route Committee
- Requires Amtrak to assemble a station development report

Studies/Admin. Changes

Intercity Passenger Rail

- Gulf Coast Working Group – Secs. 11101(d), 11304
 - Establishes multi-stakeholder group to evaluate all options for restoring intercity passenger rail service between Orlando and New Orleans
- Large projects under 49 USC §244 – Sec. 11309
 - Must now demonstrate that funding for non-federal share is committed
 - Must demonstrate that project supported by federal funds will result in operationally independent segment