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LEGISLATIVE

A Closer Look at the FY19 THUD Appropriations Bill

On February 15, 2019, President Trump signed the Consolidated Appropriations Act, 2019 into law, funding the federal government through the end of fiscal year 2019. While five of the 12 appropriations bills were passed prior to the start of FY19, Congress had been unable to pass the seven remaining appropriations packages. The Consolidated Appropriations Act, 2019 bundled those remaining seven appropriations bills into one omnibus package.

Included in the omnibus was the Transportation, Housing and Urban Development appropriations bill. In total, the THUD portion contained $71.079 billion, slightly more than fiscal year 2018’s $70.3 billion. This bill included the highest level of funding for this category since the creation of the THUD appropriations subcommittee in 2007 (prior to 2007, funding for the U.S. Department of Transportation fell under the Transportation, Treasury, Housing and Urban Development subcommittee). The unprecedented levels of funding are a result of a bipartisan budget deal that was signed into law in 2018 and lifted federal spending caps for both FY18 and FY19.

The bill included $900 million for the BUILD discretionary grant program. The program, which used to be referred to as TIGER, has traditionally been funded at an average of $500 million annually. Because of the same bipartisan budget deal that raised USDOT’s overall level of funding, the BUILD program was funded at $1.5 trillion for FY18 and now at $900 million. The omnibus limited USDOT to the selection criteria from the 2017 TIGER Notice of Funding Opportunity and called for an even split in awards between rural and urban areas. Additionally, it mandated that USDOT not use the federal share of a project as a selection criterion or consider an applicant’s ability to generate non-federal revenue.

Also included in the omnibus was $297.7 million for the Port Infrastructure Development Program. This program provides for investment in infrastructure projects at coastal seaports. The projects can either be located within the seaport’s boundary or outside of the seaport if it directly relates to port operations or intermodal connections. $92.7 million of the funds are reserved for the 15 coastal seaports with the greatest number of twenty-foot equivalent unites handled in 2016, with special consideration given to projects that will help build pest treatment facilities.

The omnibus also addressed the INFRA grant program. USDOT published their NOFO for the FY19 round of INFRA in December 2018, requesting applications by March 4. The omnibus stipulates that award selections should be transmitted to Congress no later
than 180 days after the enactment of the act, followed by the mandated 60-day Congressional review period. Additionally, the conference report that corresponded with the release of the omnibus text indicated that conferees “expect the Secretary [of Transportation] to prioritize INFRA funding awards to port projects and intermodal connections that serve those facilities, where eligible under the FAST Act.” The 2015 Fixing America’s Surface Transportation Act allows for a maximum of $500 million of the INFRA program’s funds to go to non-highway projects. While this conference statement does not change the FAST Act’s multimodal cap, it does indicate Congressional support for this particular use of funds.

**Bipartisan and Bicameral DRIVE-Safe Act Reintroduced**

Originally introduced in the 115th Congress, the Developing Responsible Individuals for a Vibrant Economy Act was reintroduced in both the House of Representatives and the Senate on February 26, 2019. Intended to help address the reported driver shortage, the bill would allow 18-year old commercial driver license holders to enter an apprenticeship program that would allow them to eventually operate in interstate commerce. Currently, some states allow 18-year olds with a CDL to operate a commercial motor vehicle in intrastate commerce but those drivers are not allowed to cross state lines until they are 21.

CDL holders aged 18 through 20 enrolled in the DRIVE-Safe Act’s apprenticeship program would participate in two probationary training periods. The first period requires the apprentice to participate in 120 hours of on-duty time, 80 hours of which would be spent operating a CMV. This period focuses on Interstate, city, and rural driving and would train the operator on basic driving skills like turns. The second period would last 280 hours, 160 of which would be spent operating a CMV. It focuses on more complex aspects of driving like backing up, pre-trip inspections, and trip planning, among other skills. Any trucks used in the program must be equipped with safety features such as a speed limiter with a maximum speed of 65 miles per hour and forward-facing video recording devices.

The Senate’s bill, S. 569, was introduced by Senator Todd Young (R-IN) and has six cosponsors: Senators Tester (D-MT), Moran (R-KS), Manchin (D-WV), Inhofe (R-OK), King (I-ME), and Cotton (R-AR). It has been referred to the Senate Committee on Commerce, Science and Transportation. The House’s bill, H.R. 1374, was introduced by Representative Trey Hollingsworth (R-IN) and also has six cosponsors: Representatives Cuellar (D-TX), Mitchell (R-MI), Cooper (D-TN), Jackson Lee (D-TX), Green (D-TX), and Westerman (R-AR). It has been referred to the House Transportation and Infrastructure Committee.
ITC Reverses Previous Decision, Finds Truck and Bus Tires from China are Causing Material Injury to the Domestic Tire Industry

The International Trade Commission and the Department of Commerce are charged with investigating alleged anticompetitive behaviors by U.S. trading partners and determining if antidumping and countervailing duties should be applied. Antidumping duties are applied when a foreign entity is determined to be selling goods in the U.S. market at less than fair value. Countervailing duties are put in place when it is determined that a foreign government is providing subsidies to the production of a good, and therefore making that good less expensive. Investigating simultaneously, DOC determines if dumping or subsidizing exists, while ITC determines if the actions cause material injury or threat to domestic industry.

In 2016, the ITC and DOC began investigations into truck and bus tires produced in China. In March 2016, ITC made affirmative determinations in the preliminary phase of both the antidumping and the countervailing investigations while DOC made affirmative determinations in their preliminary phases later that year. In January 2017, DOC announced a final affirmative determination in both investigations. However, later that year ITC made a final negative determination in both investigations, negating the previous three positive determinations and resulting in no antidumping or countervailing duties being implemented.

In late 2018, a Court of International Trade ruling remanded ITC’s final negative determinations and so ITC was required to re-examine their final ruling. On January 30, 2019, the ITC made new final determinations in both investigations – this time in the affirmative. With ITC’s finding that truck and bus tires from China are causing material injury to the domestic tire industry, DOC issued antidumping and countervailing duties. The countervailing duties range from 20.98 percent to 63.34 percent and the antidumping duties range from 9 percent to 22.57 percent. Both duties went into effect on February 15, 2019.

California Attorney General Petitions to Dismiss CTA Suit on Driver Classification

The California Supreme Court ruling in the Dynamex Operations West vs. Superior Court case in 2018 established new worker classification criteria, making it harder for carriers to classify their drivers as independent contractors in the state.

In October 2018, the California Trucking Association filed a lawsuit seeking to overturn this decision arguing that the ruling conflicts with the Federal Aviation Administration Authorization Act which prevents states from enacting laws that affected a motor carrier’s prices, routes and services. This month the State of California filed a motion
requesting the U.S. Southern District Court dismiss the CTA lawsuit. The motion to
dismiss argues that since the Dynamex decision has not been enforced against CTA, “the
plaintiffs lack standing and the court does not have any jurisdiction in the case,” and that
“generally applicable state labor regulations” are not preempted by the FAAAA. Judge
Roger Benitez is scheduled to hear the motion to dismiss on March 11.

The Western States Trucking Association filed a separate lawsuit against the Dynamex
ruling, which the State of California also motioned to dismiss. The U.S. Court for the
Eastern District of California judge presiding over this case heard arguments on that
motion but has yet to issue a decision.

State of California Seeks to Overturn FMCSA Federal HOS Preemption Decision

In December 2018, the Federal Motor Carrier Safety Administration determined that
federal hours of service regulations preempt California’s stricter meal and rest break
requirements. This decision was issued following several petitions by industry
stakeholders such as the American Trucking Associations. In February, the State of
California filed a petition with the U.S. Court of Appeals for the Ninth Circuit to reverse
FMCSA’s decision. The petition argues that the state’s Labor Secretary is statutorily
authorized to enforce labor standards, including meal and rest break regulations.
Additionally, the petition cites a previous determination by FMCSA under the George W.
Bush administration that stated “these very same worker rights were not preempted by
federal law.”

A local division of The International Brotherhood of Teamsters in San Francisco as well
as the full Teamsters union have also filed separate petitions requesting FMCSA’s
decision be overturned.