LEGISLATIVE

Bipartisan Legislation Introduced to Fully Utilize HMTF

Members of the House Transportation and Infrastructure Committee, including Chairman DeFazio (D-OR) and Ranking Member Graves (R-MO), introduced the Full Utilization of the Harbor Maintenance Trust Fund Act on April 30, 2019. The bill would make it easier for Congress to appropriate funds from the Harbor Maintenance Trust Fund, which currently has an unspent balance of approximately $9.3 billion and is expected to collect an additional $24.5 billion over the next decade, according to the Congressional Budget Office.

The HMTF is funded by ad valorem taxes on commercial cargo, and intended to be used for investments in ports and harbors. However, the amount appropriated by Congress is often far lower than the revenue collected into the trust fund. Instead, Congress uses the balance of the HMTF to offset spending in other departments. The Full Utilization of the Harbor Maintenance Trust Fund Act would allow Congress to appropriate the unspent balance of the HMTF as well as the annually collected new revenue for use on port and harbor projects. This bill has been referred to the Committee on Transportation and Infrastructure and has four cosponsors.

Senator Fischer Reintroduces Build USA Infrastructure Act

On April 4, 2019, Senator Deb Fischer (R-NE) reintroduced the Build USA Infrastructure Act. This bill is intended to address the Highway Trust Fund shortfall and would allow states to assume increased responsibilities in overseeing infrastructure projects. Specifically, the legislation would divert $21.4 billion annually to the HTF from revenue collected on freight and passengers by U.S. Customs and Border Protection. States would be allowed to enter into agreements with the Federal Highway Administration, opting out of receiving a percentage of their authorized HTF amounts. In exchange, those states would have more control over certain aspects of federal regulatory approval, including environmental permitting, development, construction, and design of projects.

The Build USA Infrastructure Act does not have any cosponsors and has been referred to the Senate Committee on Homeland Security and Governmental Affairs. A previous version of this bill died in committee during the 115th Congress.
Legislation Reintroduced to Streamline the Permitting Process

Senator John Cornyn (R-TX) reintroduced two bills on April 4, 2019 that aim to streamline the permitting process for projects by allowing states to take over certain responsibilities from federal agencies. The bills, S. 1051 and S. 1054, would amend the Endangered Species Act of 1973 and Title 54, United States Code to allow states to assume responsibilities pertaining to the environmental permitting review of certain transportation projects.

Both bills are cosponsored by Senators Sullivan (R-AK), Cruz (R-TX), and Murkowski (R-AK) and have been referred to the Senate Committee on Environment and Public Works.

REGULATORY

FY19 BUILD Grant Program NOFO Published

The U.S. Department of Transportation published a notice of funding opportunity for the fiscal year 2019 round of the BUILD grant program on April 16, 2019. The FY19 omnibus appropriations law made $900 available for this year’s BUILD grants and required that awards be split evenly between rural and urban projects. In fiscal year 2018, Congress required at least 30 percent of funds be awarded to rural projects and USDOT ultimately awarded around 70 percent of total funds to projects in a rural area. This year, Congress not only placed a mandate on the percentage of funds to go to rural areas (50 percent) but also on the percentage to go to urban areas (50 percent), resulting in an even split.

Differing from recent rounds, Congress also mandated that USDOT make up to $15 million available for planning grants. However, USDOT noted in the NOFO that applications for planning grants will be less competitive than capital grants as “program funding for projects that propose to move into the construction phase within the period of obligation” will be prioritized.

The FY19 appropriations omnibus also mandated that selection criteria from the fiscal year 2017 BUILD NOFO be used for this year’s NOFO, with the requirement that USDOT not use the Federal share or an applicant’s ability to generate non-Federal revenue as selection criteria. Although USDOT met this requirement by maintaining the same criteria as the FY17 NOFO while deleting the criterion regarding non-Federal share, they did make minor updates to some of the criteria descriptions. Applications are due July 15, 2019 and, per the omnibus, awards must be made no later than 270 days after the omnibus’ passage, February 15, 2019, so selections should be announced by November 12, 2019.
WSTA Appeals Dismissal of Worker Classification Lawsuit

In 2018, the California Supreme Court ruling in the Dynamex Operations West vs. Superior Court case established new worker classification criteria, making it harder for carriers to classify their drivers as independent contractors in the state. Shortly after this ruling, the Western States Trucking Association filed a suit seeking to overturn the decision. WSTA argued that the Dynamex ruling should be preempted by the Federal Aviation Administration Authorization Act of 1994 which prohibits states from enacting laws that affect a motor carrier’s prices, routes and services. It also alleged that the decision violated the Commerce Clause of the U.S. Constitution, which states that Congress has the authority to regulate commerce.

In late March, the U.S. District Court for the Eastern District of California dismissed WSTA’s suit. The court ruled that “California’s wage orders do not … discriminate against interstate commerce but instead set out generally applicable requirements that apply equally to in-state, multi-state, and out-of-state employers within California,” therefore the Commerce Clause does not apply. Additionally, the judge stated that since the Dynamex decision only had an indirect effect on rates it is not preempted by the FAAAA. On April 16, 2019, WSTA filed a notice of appeal against the dismissal.

GAO Publishes Report on Underride Guards, Makes Recommendations to USDOT

The U.S. Government Accountability Office published a report titled “Truck Underride Guards- Improved Data Collection, Inspections, and Research Needed” on April 15, 2019. The report examined underride crash data and underride guard technologies by reviewing proposed regulations and interviewing key stakeholders.

Underride crashes can occur during collisions between passenger vehicles and large trucks due to their height differences, which is why the National Highway Traffic Safety Administration requires rear guards be installed on most trailers. The report notes that while underride crashes are not common, the consequences are more likely to be severe. GAO recommended U.S. Department of Transportation: 1) provide a standardized definition of underride crashes and data fields as these incidents often go unreported due to differing local and state regulations; 2) provide information and training to local and state police departments on identifying and recording underride crashes; 3) establish annual inspection requirements for rear guards; and 4) conduct additional research on side underride guards. USDOT concurred with GAO’s recommendations and indicated they would provide a detailed response to each recommendation within 180 days.

The study was requested by Senators Wicker (R-MS), Burr (R-NC), Gillibrand (D-NY), Rubio (R-FL), and Thune (R-SD) following the introduction of the Stop Underrides Act in 2017. This legislation, recently reintroduced in both chambers, would require USDOT to issue a
final rule requiring an update to rear underride standards and adding a requirement for front and side underride guards on all trailers, semi-trailers, and single unit trucks over 10,000 pounds. H.R. 1511 was referred to the House Committee on Transportation and Infrastructure and S. 665 was referred to the Senate Committee on Commerce, Science, and Transportation.