President Signs Second CR Through Dec. 20; Highway Rescission Repealed

Unable to agree on a full-year appropriations package, Congress has passed a second continuing resolution to prevent a government shutdown. The “Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019” extends fiscal year 2019 funding levels through December 20, 2019. On November 21, just hours before the previous CR was scheduled to expire, President Trump signed the new short-term funding measure into law.

In addition to extending FY19 appropriations, a provision within the stopgap resolution repealed a major cutback in highway contract authority that would have taken effect July 1, 2020. Mandated by the 2015 Fixing America’s Surface Transportation Act, the $7.6 billion rescission would have forced many states to de-obligate highway funds for existing projects. The Federal Highway Administration released a report in early November projecting the total unobligated balances subject to the rescission at over $5.35 billion. However, with the repeal of the rescission, states will have increased flexibility to complete these critical projects.

Although the 2020 fiscal year officially began October 1, lawmakers have faced significant challenges in finalizing all twelve appropriations bills. House and Senate appropriators now have until December 20 to negotiate a full-year funding package or agree to another CR in order to prevent a government shutdown just before the holidays.

Legislation Introduced to Increase Enforcement of Passenger Preference Laws

Senator Durbin (D-IL) introduced the Rail Passenger Fairness Act on November 20, 2019. The bill would allow Amtrak to sue freight railroads for violating passenger preference laws. Currently, freight carriers are statutorily required to give priority to passenger trains operating on their tracks. The Department of Justice is responsible for overseeing the enforcement of this law and holding carriers accountable who fail to comply. The proposed legislation would authorize Amtrak to bring civil action against freight carriers that violate the preference rules. Senator Durbin’s press release highlighted the results of a congressionally mandated report issued by Amtrak’s Office of the Inspector General in October 2019. The report, examining Amtrak’s on-time performance and its financial impacts, found that nearly 60 percent of Amtrak delays in fiscal year 2018 were caused by freight interference.

The bill has no cosponsors and was referred the Senate Commerce, Science, and Transportation Committee.
California Trucking Association First to Challenge AB-5

On September 11, 2019, California Assembly Bill 5 was signed into law, codifying the California Supreme Court’s Dynamex Operations West, Inc. v. Superior Court decision into state law. The Dynamex ruling and AB-5 established a new, stricter test to determine whether workers are classified as employees or independent contractors. In November 2019, the California Trucking Association filed an amended lawsuit challenging the state's adoption of this new "ABC test" for worker classification.

CTA filed its original suit in October 2018 following the Dynamex decision. The amended complaint broadens the scope of the lawsuit now that AB-5 has been codified into law. The ABC test assumes nearly all truck drivers are employees, placing the burden of proof on carriers if they wish to dispute this classification. CTA argues the three-pronged test will dismantle the owner-operator model, forcing motor carriers in California to switch to an employee-only model or discontinue their business in the state. According to CTA, approximately 70,000 independent drivers in California will be unable to work under AB-5, causing a major disruption in trucking services and motor carrier costs.

CTA argues the ABC test is preempted under the supremacy clause of the U.S. Constitution, which established federal authority over any conflicting state laws. CTA also states the test contradicts a federal law passed in 1994, the Federal Aviation Administration Authorization Act, to prohibit states from imposing laws on motor carrier prices, travel, and services. Further, they assert that AB-5 would place an excessive burden on interstate commerce, which violates the commerce clause of the U.S. Constitution. Seeing as the enforcement of AB-5 would also subject drivers to California’s meal and rest break provisions, CTA contends the bill is in direct conflict with the Motor Carrier Safety Act.

California’s AB-5 will take effect January 1, 2020.

USDOT Announces BUILD Grant Recipients

On November 11, 2019, the U.S. Department of Transportation announced the recipients of awards under the Better Utilizing Investments to Leverage Development discretionary grant program. The BUILD program, formerly known as TIGER under the Obama administration, provides grants for road, rail, transit, and port projects with significant local or regional impact. This year, the Department received 666 applications requesting over $9.6 billion in funding. The fiscal year 2019 round of BUILD made $900 million available, with a small portion reserved to cover USDOT’s administrative costs. The grants were awarded to 55 projects in 35 states for a total of $883.5 million. Eight grants, totaling $139 million, were awarded to projects with benefits to the intermodal industry.