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Passenger Rail Expansion in the Senate Infrastructure Bill

On August 10, 2021, the Senate passed an amended version of H.R. 3684, the Infrastructure Investment and Jobs Act. The bill contains a five-year reauthorization of surface transportation programs, including those for freight and passenger rail. It would retain or alter many programs authorized in the previous authorization act, the Fixing America's Surface Transportation Act of 2015 (FAST Act; P.L. 114-94). Besides setting authorized funding levels subject to the availability of future appropriations, it would directly appropriate $550 billion in additional funds, including $66 billion for rail, to be made available to recipients in (usually equal) portions on a yearly basis through FY2026. Of that $66 billion, barring any future rescissions, at least $18 billion would be available for costs directly related to expanding passenger service to new corridors, in addition to funds that may be made available through other multimodal programs.

Unless otherwise noted, rail grant programs are to be administered by the Federal Railroad Administration (FRA), part of the Department of Transportation (DOT).

Federal-State Partnership for Intercity Passenger Rail Program

Section 22307 would make substantial changes to the Federal-State Partnership for State of Good Repair program first authorized by the FAST Act. Renamed the Federal-State Partnership for Intercity Passenger Rail program, it would constitute the bulk of funding available for implementing new passenger rail routes. While the original program prioritized rehabilitation or replacement of aging infrastructure on the Northeast Corridor (NEC) between Boston and Washington, the revised program would have broader eligibility in terms of project types and selection criteria.

As amended by the Senate, the bill would appropriate $36 billion for the program, of which no more than $24 billion could be awarded to projects on the NEC. Accordingly, at least $12 billion would be available for off-NEC network expansion. The bill would also authorize $7.5 billion for the program contingent on future appropriations, of which $3.4 billion to $4.1 billion would be available for network expansion, with the remainder reserved for projects on the NEC.

For projects not located on the NEC, the bill would prioritize those for which Amtrak is not the sole applicant, and that are consistent with a corridor inventory prepared under the Corridor Identification and Development Program described below.

The program would allow the Secretary of Transportation to issue letters of intent committing future appropriations to selected applicants, and/or to enter into phased funding agreements for larger projects. Depending on how DOT structures the grant solicitation, this could potentially allow it to commit most or all of the $36 billion in supplemental appropriations such that funds would be disbursed over a multiyear period to a single cohort of selected projects.

Even discounting projects on the NEC, there are a number of large projects currently under way that might be eligible under the program, including the California High Speed Rail project.

Restoration and Enhancement Grant Program

The Restoration and Enhancement grant program was created in the FAST Act and would be reauthorized with few changes in Section 22304 of the Senate bill. The program differs from other rail grant programs in that funds may be used to cover operating (as opposed to only capital) expenses for the first several years, in order to defray the costs ordinarily borne by states under federal law. The Senate bill would expand the use of grant funds for that purpose; whereas current law allows the federal government to pay 80% of the cost of operating a new route in the first year, declining to 40% in the third year, the bill would allow federal funds to cover a share that declines from 90% to 30% over six years. This change would lessen the near-term cost of a new route for state governments and allow more time for state sponsors to generate ridership and identify sources of state funding.

The program was originally intended to support reactivation of routes previously served by Amtrak, such as the New Orleans-Mobile corridor that has been without Amtrak service since 2005. While projects to restore service over routes served by Amtrak prior to 2015 are to be given priority under H.R. 3684, so are routes "that would enhance connectivity and geographic coverage of the existing national network of intercity rail passenger service." This suggests that a route that has received no intercity rail service since before the creation of Amtrak in 1970 would still be eligible for funding under the program, and would be entitled to receive priority in the selection process if it connects to the current network.

The bill's supplemental appropriations include $250 million for the program, to be withheld from amounts appropriated for Amtrak National Network Grants as described below. The bill would also authorize $250 million for the program contingent on future appropriations.

Amtrak National Network Grants for Corridor Development

The bill would increase annual funding for National Network grants, which would be available for Amtrak's share of eligible costs associated with new and existing routes off the NEC, after certain set-asides (including $250 million for Restoration and Enhancement grants as described above). Under Section 22101(h), Amtrak would be permitted to use up to 10% of National Network appropriations for the purposes of "corridor development," including the payment of operating expenses in the same decreasing shares permitted under Restoration and Enhancement. Of $16 billion directly appropriated for National Network grants, up to $1.6 billion would therefore be available for corridor development, as well as up to $1.3 billion of the nearly $13 billion authorized but contingent on future appropriations. Funds set aside for corridor development would be available only for corridors selected as part of the Interstate Compacts program described below.

Amtrak's FY2022 legislative report and grant request proposed a more expansive corridor development program—separate from Amtrak's annual grants—that could be used to cover capital projects in addition to 100% of operating costs for the first few years of a new or expanded service. The measure passed by the Senate is considerably pared back by comparison.

Interstate Compact Program

Section 22306 would create a new program to provide financial support for interstate compacts formed to plan, oversee, or otherwise advance the creation of new intercity passenger rail routes. Up to 10 compacts among two or more states would be eligible to be selected for a grant of up to $1 million per year; the appropriations are provided by a $3 million annual set-aside from Amtrak National Network grant funds.

Grants to interstate compacts would mainly be available for planning and administration, not construction of infrastructure or operation of services. New routes advanced under an interstate compact are eligible to receive funds set aside from Amtrak National Network appropriations for corridor development. Pursuant to the Amtrak Reform and Accountability Act of 1997 (P.L. 105-134), interstate compacts concerning passenger rail service do not require congressional approval.

Corridor Identification and Development Program

Section 22308 directs the Secretary of Transportation to solicit proposals for the development of intercity passenger rail corridors from eligible entities. Having selected proposals for further support, the Secretary would be directed to work with the applicants to determine the level of financial support necessary to implement the proposals, support the completion of service development plans, identify a "pipeline" of individual capital projects required for service initiation, and carry out other functions. Projects identified in a service development plan and corridor inventory under this program would be given priority over other projects not located on the NEC when applying for Federal-State Partnership funds.

Other FRA Programs

Intercity passenger rail projects would remain eligible under the reauthorized Consolidated Rail Infrastructure and Safety Improvement (CRISI) grant program, for which the bill would appropriate a total of $5 billion, and would also authorize $5 billion subject to future appropriations, over five years. The program has broad eligibility for use in a wide variety of passenger rail projects. Historically, however, CRISI funds have gone mainly to projects that benefit freight railroads.

Similarly, Section 22305 would create a new program designed to fund road-rail crossing grade separation projects, with $3 billion in appropriations. Grade separation projects may benefit passenger rail corridors, but this is not the program's primary intended purpose; FRA may prioritize other benefits when selecting projects to receive grants.

Other DOT Programs

Sections 21201 and 21202 would codify two National Infrastructure Investments programs, to be administered by the Office of the Secretary of Transportation. The programs would receive a total of $12.5 billion in supplemental appropriations split between "national" and "local" project assistance (similar to the RAISE program, formerly known as TIGER or BUILD). Another $17.5 billion would be authorized, pending future appropriations. Passenger rail projects would remain an eligible use of these funds, although Amtrak would be allowed to apply only in partnership with states, transit agencies, or other eligible applicants. Since these are multimodal programs, passenger rail projects would be competing with freight rail, highway, and port projects for program dollars.

Intercity passenger rail corridors that also host (or plan to host) commuter rail service may also be eligible to apply for the Capital Investment Grant (CIG, or New Starts) program administered by the Federal Transit Administration. This program does not involve an annual solicitation for applications. Rather, projects advance through phases as they meet certain milestones and demonstrate the ability to provide certain benefits. The Senate bill would appropriate $8 billion for CIG projects, and would authorize $15 billion contingent upon future appropriations, with some funding already committed to previously approved projects.

Changes to the State-Supported Route Cost Allocation Methodology

Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432, Div. B) required the adoption of a uniform cost allocation policy for state-supported Amtrak routes (i.e., those less than 750 miles long and located off the NEC). Among other stipulations, the methodology requires all operating shortfalls to be covered by state funds, not by direct federal support to Amtrak. Section 22211 of the Senate bill would require a revised policy to be issued no later than the end of FY2023. While this would not make any new funding directly available, some states may be less hesitant to sponsor new intercity passenger rail service if the revised policy lessens states' obligations to cover future operating costs.

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