Freight Rail Customer Alliance

Fiscal Year 2022 Budget and Appropriations
Surface Transportation Board

FRCA Position

FRCA continues to support the highest annual appropriated level possible for the Surface Transportation Board (STB or Board), particularly the level needed to update and enhance the Board's information technology (IT) and data needs to better ensure transparency, consistency, timeliness, and ease of access.

For Fiscal Year 2022, FRCA is advocating at minimum, $39.152 million for the STB as recommended by President Biden in the Administration's FY 2002 Budget.

Issue Background

The STB requires adequate resources to perform key functions: rail rate reasonableness oversight; processing of rail consolidations, licensing, and other restructuring proposals; and, the resolution of non-rail matters.

For the first time, the Board is now operating with a full complement of Board Members (as allowed for under the ***Surface Transportation Board (STB) Reauthorization Act of 2015***). It anticipates a steady, and potentially increased workload given its important statutory responsibilities, including those under the Interstate Commerce Act and the ***STB Reauthorization Act of 2015***. In addition to meeting shortened rate case processing deadlines, the Board is exploring options to improve its rate case methodologies for all shippers, as well as working to improve the timeliness of its decisions generally.

As such, the annual Presidential Budget requests have been devoted primarily for basic operating expenses, including salaries and benefits, rent, security, and activities associated with carrying out its mandated responsibilities, which are largely driven by the number and types of cases filed.

Most recently, FRCA successfully advocated for the following appropriated funding levels and accompanying report language addressing shipper concerns regarding the continued delays in regulatory proceedings, a lack of a full complement of Board Members, service problems, and a greater use of Cost Benefit Analysis in Fiscal Years (FYs):

- 2021 – $37.5 million, as recommended in the Administration's Budget.
- 2020 – $37.1 million, as recommended in the Administration's Budget.
- 2019 – $37.1 million (of which $2.797 million to be directed to IT upgrades), as recommended in the Administration's FY 2019 Budget.

Actions

✓ U.S. Senate

On Oct 19, Senate Appropriations Committee Chairman Patrick Leahy (D-VT) released the draft FY 2022 appropriation bills for the remaining nine measures, including the draft bill for the U.S. Department of Transportation, Housing and Urban Development Department, and related agencies (THUD), such as the STB.

The amount for the STB would be $39.152 million as previously approved by the U.S. House of Representatives and as recommended by President Biden in the Administration's FY 2022 Budget. In terms of accompanying report language, FRCA supported text is:

> Regulatory Proceedings.—There remain a number of pending regulatory proceedings that would reform existing regulations at the STB. The Committee continues to encourage the STB to provide a timely and decisive regulatory process.
>
> Cost-Benefit Analysis.—In November 2019, the Board issued a solicitation of information to request comments from stakeholders on whether, and how, particular cost-benefit analysis approaches might be more formally integrated into the Board's rulemaking process. The Committee continues to encourage the Board to thoroughly review and consider all comments received, including those from independent agencies that are not statutorily required to have cost-benefit analysis procedural rules, in response to that solicitation of information. If the Board decides to adopt a cost-benefit analysis procedure for significant rulemakings, the Committee encourages the Board to request additional resources, as necessary, to ensure the Board has the necessary staffing and expertise to undertake such cost-benefit analysis.

The FRCA support letter sent to the House Appropriations Committee can be **read here**.

✓ U.S. House of Representatives

On July 29, the House passed along a party line vote of 219- 208, a package of seven Fiscal Year (FY) 2022 appropriations bills, H.R. 4502, the ***FY 2022 Consolidated Appropriations Act***. This "mini-bus" would provide $597.7 billion in discretionary budget authority that largely aligns with President Biden's numerous proposals in the Administration's FY 2022 Budget for numerous Federal departments and related agencies.

This "mini bus" vote also included the appropriated funding for the departments of Transportation, and Housing and Urban Development (THUD) as previously approved by the House Appropriations Committee on July 16, 2021 in **H.R. 4450, H.Rpt. 117-99**.

The amount for the STB would be $39.152 million as recommended by President Biden and as actively supported by FRCA. In terms of accompanying report language, FRCA supported text is:

> Cost-benefit analysis. —In March 2019, a petition was filed with the STB to institute a rulemaking to adopt procedural rules that would require a cost-benefit analysis in certain future STB rulemaking proceedings. In response, the STB reviewed the practices at other agencies, including independent agencies that, like the STB, are not statutorily required to have cost-benefit analysis procedural rules. In November 2019, the STB issued a solicitation

of information to request comments from stakeholders on whether and how particular cost-benefit analysis approaches might be more formally integrated into the STB's rulemaking process. The Committee continues to encourage the STB to thoroughly review and consider all comments received in response to the solicitation of information to determine the extent to which cost-benefit analysis would be helpful in ensuring that the economic consequences of certain significant rulemakings are fully evaluated and that the basis for any decisions are clear to stakeholders. If the STB decides to adopt a cost-benefit analysis procedure for significant rulemakings, then the Committee encourages the STB to request additional resources, as necessary, to ensure the STB has the staffing and expertise to undertake such cost-benefit analyses.

The FRCA support letter sent to the House Appropriations Committee can be **read here**.

✓ Administration
On May 28, President Biden submitted the Administration's FY 2022 Budget to the U.S. Congress. The Administration's Budget can be read **here** and the STB Budget can be read **here**.

Refer to the FRCA ***FY 2022 Surface Transportation Board Side-by-Side*** for details, which follows this document.

Status
On September 30, President Biden signed into law, **PL 117-43**, a ***Continuing Resolution*** (***CR***) which is keeping the Federal government is operating at basically FY 2021 levels thru Dec 3.

The current FY 2022 began Oct 1.

Outlook
FRCA understands that Chairman Leahy plans to hold no subcommittee or full committee mark-ups (opportunities to submit amendments or votes) on these nine appropriation draft bills, including THUD. It seems as if the Chairman's intent is to be in a position to reach final agreements with the House at some point. However, the Republican Senators serving on the Senate Appropriations Committee are not happy with this approach where the Committee's Ranking Member, Richard Shelby (R-AL) stated to reporters on Oct 19 that, "We would like to offer a counteroffer with what we're doing, We've already said we would categorically reject" the Democrats' offer. Shelby declined to say when Republicans would make a counteroffer and declined to say whether the offer would be focused exclusively on Senate negotiations or if they would jumpstart bicameral talks with the House.

FRCA understands that House Democrats want to reach a final agreement on a FY 2022 THUD package prior to Dec 3.

Adding another layer of complexity is that the Federal Debt Limit is expected to be reached on Dec 3. Earlier this month, an agreement was reached with Senate Minority Leader Mitch McConnel (R-KY) to increase the debt limit by $480 billion to $28.9 trillion, temporarily averting a default on U.S. debt obligations. This bill was signed into law, **PL 114-50**, on Oct 14.

Looking like another ***CR*** after Dec 3. The probable duration, not known at the time of this writing.