



Board Report

File #: 2019-0635, File Type: Federal Legislation / State Legislation (Position)

Agenda Number: 35.

EXECUTIVE MANAGEMENT COMMITTEE  
SEPTEMBER 19, 2019

SUBJECT: FEDERAL LEGISLATION

ACTION: ADOPT STAFF RECOMMENDED POSITIONS

RECOMMENDATION

ADOPT staff recommended positions:

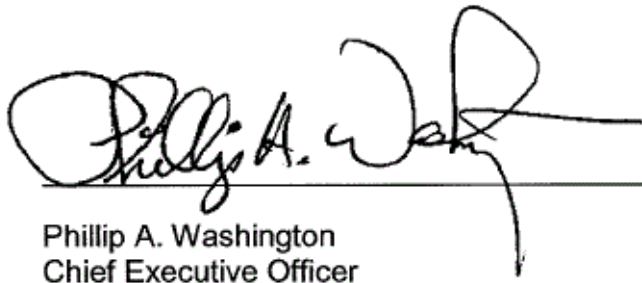
- A. House Resolution 4101 (Bass) / Senate Bill 2404 (Gillibrand) - Build Local Hire Local Act  
**SUPPORT**
- B. Senate Bill 2302 (Barrasso) - Federal Authorization for Highway Programs - America's  
Transportation Infrastructure Act of 2019 **WORK WITH AUTHOR**

ATTACHMENT

Attachment A - H.R. 4101 (Bass)/ S. 2404 (Gillibrand) Legislative Analysis  
Attachment B - S. 2302 (Barraso) Legislative Analysis

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Phillip A. Washington  
Chief Executive Officer

## ATTACHMENT A

**BILL:** H.R. 4101/S.2404

**AUTHOR:** CONGRESSWOMAN KAREN BASS (D-CA) AND U.S. SENATOR KIRSTEN GILLIBRAND (D-NY)

**SUBJECT:** BUILD LOCAL HIRE LOCAL ACT

**STATUS:** REFERRED TO THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, AND IN ADDITION TO THE COMMITTEES ON EDUCATION AND LABOR, AGRICULTURE, FINANCIAL SERVICES, ENERGY AND COMMERCE, NATURAL RESOURCES, HOMELAND SECURITY, AND SMALL BUSINESS AND THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

**ACTION:** SUPPORT

### **RECOMMENDATION**

Staff recommends that the Board of Directors adopt a SUPPORT position on House Resolution 4101/S. 2404, the Build Local Hire Local Act.

### **ISSUE**

H.R. 4101, which was introduced on July 30, 2019 by Congresswoman Karen Bass and S. 2404 which was introduced on July 31, 2019 by U.S. Senator Kirsten Gillibrand seek to allow for geographic hiring preferences on federally funded transportation projects, among other changes to federal law.

### **DISCUSSION**

Metro has a longstanding and nationally recognized track record of successfully working to reform federal local hire rules. Congresswoman Karen Bass (D-CA), working closely with our agency, successfully included language in the Federal Fiscal Year 2015 transportation funding bill to permit local hiring for federally funded transportation projects. This language, which was followed by similar language in the Fiscal Years 2016 and 2017 transportation spending measures, served as a precursor for the Obama Administration's Local Hire Pilot Program that was administered by the U.S. Department of Transportation (USDOT). In 2017, the Trump Administration ended the Local Hire Pilot Program. Guided by our Board-approved Federal Legislative Program, our agency has continued to advocate for legislative solutions that will allow for Local Hire practices on federally funded transportation projects.

The Build Local Hire Local Act represents an expansion of past proposals on the topic – specifically the Local Hire Act introduced by Congresswoman Bass in the 115<sup>th</sup> Congress. The legislation, if approved in its current form, would require the use of Local

Hire on all federally funded infrastructure projects, not just projects funded through U.S. Department of Transportation. The bill includes an increase in the required set-aside for SBE and DBE participation for federally funded contracts. The bill also develops new best value procurement standards that give preference to bids that use the U.S. Employment Plan – a contracting tool currently used by Metro on its Rolling Stock projects over \$100 million in size. In terms of funding, the bill would provide \$5 billion annually to award competitive grants for technical assistance and to develop programs that connect communities to employment opportunities. Lastly, the bill would expand prevailing wage requirements to all federally funded infrastructure project outlined in the bill, and would create a Buy America Bureau to better ensure compliance with Buy America laws.

### **DETERMINATION OF SAFETY IMPACT**

There is no determined safety impact due to the enactment of the proposed legislation.

### **FINANCIAL IMPACT**

There is no financial impact related to this legislation.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Staff recommendation supports strategic plan goal # 4.2: Metro will help drive mobility agendas, discussions and policies at the state, regional and national levels.

### **ALTERNATIVES CONSIDERED**

Staff has considered adopting an oppose position on the bill. Adopting an oppose position on the bill would be counter to the advocacy efforts as outlined in the Board-approved 2019 Federal Legislative Program.

### **NEXT STEPS**

Should the Board adopt a SUPPORT position on this measure, staff will communicate the Board's position to the authors and work with Congress to ensure its adoption into law. Staff will continue to keep the Board informed as this issue is addressed throughout the 116<sup>th</sup> Congress.

## ATTACHMENT B

**BILL:** S. 2302

**AUTHOR(S):** U.S. SENATOR JOHN BARRASSO (R-WY)

**SUBJECT:** FEDERAL AUTHORIZATION FOR HIGHWAY PROGRAMS – AMERICA’S TRANSPORTATION INFRASTRUCTURE ACT OF 2019

**STATUS:** ADOPTED BY THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS – CURRENTLY PENDING BEFORE THE U.S. SENATE

**ACTION:** WORK WITH AUTHOR

### **RECOMMENDATION**

Staff recommends that the Board of Directors adopt a WORK WITH AUTHOR position on the America’s Transportation Infrastructure Act (S. 2302).

### **ISSUE**

With the Fixing America’s Surface Transportation (FAST) Act slated to expire next year, the 116<sup>th</sup> Congress has begun the task of crafting new bills that would re-authorize federal highway, transit and safety programs. The America’s Transportation Infrastructure Act of 2019 (ATIA) seeks to authorize, for a five year period, \$287 billion for our nation’s roads and bridges.

### **BACKGROUND**

Our nation’s current federal law that authorizes surface transportation funding and programs is set to expire on September 30, 2020. As the expiration of the FAST Act nears, a number of congressional committees have begun to hold hearing and markups to craft a new surface transportation authorization bill to meet America’s mobility challenges.

Because surface transportation authorization bills deal with various modes of transportation and issues covered by multiple committees, the process of crafting a new bill is complex. In the U.S. House of Representatives the jurisdiction over a new surface transportation bill is split among two committees. The Committee on Transportation and Infrastructure is charged with crafting the highway, transit, rail and safety sections of the bill – while the financing of the bill is the responsibility of the Committee on Ways and Means.

In the U.S. Senate, the jurisdiction over a new surface transportation bill is split among four committees. The Committee on Environment and Public Works covers the highway

title – while the Committee on Banking, Housing and Urban Affairs handles the transit title. The Committee on Finance is charged with funding issues and lastly, the Committee on Commerce, Science and Transportation has jurisdiction over the rail and safety title.

## **DISCUSSION**

On July 29, 2019 U.S. Senators John Barrasso (R-WY), Thomas Carper (D-DE), Shelley Moore Capito (R-WV), and Benjamin Cardin (D-MD) introduced the ATIA – which would authorize federal highway funding and programs for a period of five years. On July 30, 2019 the U.S. Senate Committee on Environment and Public Works adopted the bill by a margin of 21 to 0.

The ATIA is largely a bill that builds on the FAST Act – while making very few changes to existing formula funding programs. The bill would provide \$287 billion over five years (\$259 billion for formula programs), which represents an increase of 27% over the FAST Act authorized funding levels.

The ATIA does include a number of changes that are notable for our agency:

**Bridges (Sec. 1119):** The legislation authorizes over \$6 billion in new competitive grants for shovel ready bridge investments – including the creation of a new multi-year funding program for larger bridge projects. Notably, the “Bridge Investment Program” stipulates that grants can only be allocated to projects that expect to begin construction within an 18 month period.

**Resiliency (Sec. 1103):** In an acknowledgment of the effect of climate change on roadways and bridges – the bill provides over \$4.9 billion over five years to protect these assets from natural disasters, such as extreme weather events. The new program would provide both formula funding and \$1 billion in grant funding for resiliency projects – including those in coastal states dealing with highway erosion issues.

**INFRA Grants (Sec. 1110):** The legislation provides \$5.5 billion for the Nationally Significant Freight and Highway Projects Program. However, the bill includes language that directs \$1 billion of these funds for “critical urban and rural states” that by design exclude from eligibility projects in the State of California because our state does not meet the designated population density under both the urban and rural states designation.

**Transportation Infrastructure Finance and Innovation Act (TIFIA) (Sec. 1123):** This section creates a new process for exchanging and redistributing uncommitted TIFIA balances to projects in the Appalachian region. **(Sec. 1507):** This section adds new requirements for TIFIA loans being used in a Public Private Partnership project. **Sec. 2001:** This section broadens eligibility for low-interest TIFIA loans to include transit oriented developments near mass transit stations. The legislation also makes reforms to “streamline and expedite delivery” of TIFIA loans to address the frustration of many stakeholders who are concerned about the slow speed of the TIFIA loan process.

Congestion Mitigation and Air Quality Program (Sec. 1115): The legislation opens eligibility for the CMAQ program for some waterway related projects. Also included in the legislation is language that broadens CMAQ eligibility for transit systems in rural and small urbanized areas for operating assistance without any time limitation. The limitation would continue for transit systems that operate in large urbanized areas, such as those in Los Angeles County.

P3s and Tolling (Sec. 1507 and Sec. 1118): The legislation makes a number of minor changes for public private partnerships – including a provision that defines eligible projects as those having an estimated total cost of at least \$100 million and being carried out using some federal financial assistance through agreements between a public agency and a private entity to finance, build, and maintain or operate such projects. The bill also requires public private partnerships to conduct a Value for Money analysis if they are utilizing federal funding or financing mechanisms. With respect to tolling – the legislation is largely silent – leaving intact the authority to institute tolling that was embedded in the FAST Act.

Congestion Relief Program (Sec. 1404): This section establishes a congestion relief program to provide discretionary grants to eligible entities to advance innovative, integrated, and multimodal solutions to congestion relief in the most congested metropolitan areas of the United States.

Future Funding (Sec. 3001): In a nod to the declining health of the federal Highway Trust Fund – the legislation authorizes \$125 million for a national research program and statewide pilot projects to test road usage fees and other alternatives to the existing 18.4 cent federal gas tax.

### **DETERMINATION OF SAFETY IMPACT**

Securing additional federal funding for our agency's safety programs and projects (i.e. – grade separations) will enhance the safety of our system.

### **FINANCIAL IMPACT**

A new federal surface transportation authorization law – with robust funding - would enhance the federal formula funding our agency receives on an annual basis, as well as the federal grants our agency secures from the U.S. Department of Transportation.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Staff recommendation supports strategic plan goal # 4.2: Metro will help drive mobility agendas, discussions and policies at the state, regional and national levels.

## **ALTERNATIVES CONSIDERED**

Staff considered adopting either a support or oppose position on this bill. Staff believes a WORK WITH AUTHOR position best positions our agency to continue its work with Congress to advance our goal of securing a new surface transportation authorization legislation that delivers a maximum amount of resources to our agency and also delivers policy reforms sought in our Board-approved Federal Legislative Program.

## **NEXT STEPS**

Should the Board decide to adopt a WORK WITH AUTHOR on this legislation; staff will communicate the Board's position to the author and work to ensure that the final version of the bill – consistent with our Board-approved Federal Legislative Program - is favorable with respect to the funding and policy changes sought by our agency.