Statement of Interest

The American Short Line and Regional Railroad Association (ASLRRA) is a non-profit trade association representing approximately 600 Class II and Class III railroads in the United States, Canada and Mexico as well as hundreds of suppliers and contractors to the short line and regional railroad industry. Short line railroads operate 50,000 miles of track in 49 states, or approximately 38% of the national railroad network, touching in origination or termination one out of every four cars moving on the national railroad system. Short lines serve customers as first mile/last mile providers, largely in rural America, who otherwise would be cut off from the national railroad network. Our comments will address the questions in the request for information regarding rail grade crossing safety improvements, disaster preparedness and infrastructure funding.

Comments

1. Identifying Unmet Needs in Rural Transportation

   A. What infrastructure issues are contributing to high fatality rates on rural roadways and rail-highway grade crossings (e.g., roadway condition or geometry, driver behavior, wildlife collisions)?
Federal Railroad Administration (FRA) data states that 95% of all railroad-related fatalities are at highway-rail grade crossings or due to pedestrian trespassing. While any fatality is too many, the number of fatalities has steadily decreased since the creation of the Section 130 railway-highway grade crossings program. Between 2000 and 2018, grade crossing fatalities decreased by 37%. Under this program, approximately $230 million in federal funds are allocated annually to state Departments of Transportation (DOT’s) for installing and upgrading active warning devices and improving grade crossing surfaces. It is necessary for Section 130 funds to remain a budgetary set-aside. If this funding were to become integrated with other highway funding, grade crossing projects would have a difficult time competing for attention and resources. Rural communities with grade crossings would suffer, as they are already competing with urban areas for highway maintenance funds. We suggest keeping Section 130 intact as a budgetary set-aside.

B. What unique challenges do rural areas face related to infrastructure condition (e.g., age of infrastructure or equipment, including vehicles, bridge closures or postings, types of freight carried, weather resiliency)?

When there are natural disasters like floods, hurricanes, tornados, etc., there are specific statutory disaster relief programs at the Federal Highway Administration (FHWA) for highways and at the Federal Transit Administration (FTA) for commuter railroads, subways, and other public transportation. However, there is currently no corresponding disaster aid program at FRA for short line railroads. This leads to challenges in disaster recovery. For example, short line railroads were impacted in 2019 by the severe flooding in the Midwest and the polar vortex that swept through large portions of the country and were left with few federal funding opportunities to help rebuild and maintain their infrastructure under such extreme conditions. Congress in the past 20 years has twice
made small one-time special disaster aid appropriations for Class II and III railroads, but there is no statutory authorized program or structure. $20m for this purpose was provided for in the 2009 appropriations process and was successfully used throughout the country, but the program has not been funded since. Class II and III railroads are eligible for Consolidated Rail Infrastructure and Safety Improvements (CRISI) grants, but CRISI is not set up for immediate disaster response. The Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) can provide disaster loans, but not grants for critical Class II and III railroad infrastructure like bridges and track. DOT should include in its surface transportation reauthorization bill or proposals to be sent to Congress an authorized disaster relief program for Class II and III railroads. We encourage DOT and FRA to review a proposal and draft legislation prepared by ASLRRA for such an authorized program. The draft text can be found in appendix A.

2. Addressing Unmet Needs Through DOT Discretionary Grant Programs

This next section of comments will address questions A, B, and C under question 2. The Railroad Rehabilitation and Improvement Financing (RRIF) Express program, managed by the DOT’s Build America Bureau, is an important initiative to attempt to make this federal rail loan program more accessible to Class II and III railroad borrowers. Many of these short line and regional railroads operate wholly or partially in rural areas and provide critical freight service to rural businesses and communities. Nearly all these railroads are small businesses. RRIF Express deploys a subsidy appropriated in 2018 of $25 million to offset application processing fees and credit risk premium charges. These subsidies may serve to increase the accessibility of RRIF to small rural railroads. However, there is one hurdle that we have identified that will prevent may short line
railroads from using this program unless this hurdle is addressed: RRIF Express presently requires borrowers to submit five prior years of audited financial statements with their applications. Typically, small railroads would only have audited historical financial statements if they were required to do so by some external shareholder or controlling authority. The majority of short lines, particularly rural Class III railroads, do not have such stakeholders and will not have audited statements for previous years. Other federal credit programs, such as those supported by the SBA accept unaudited statements if accompanied by verified federal tax returns of the borrower. This RRIF Express requirement is a Department policy decision. DOT should consider creating alternative options within the RRIF Express initiative whereby unaudited financial statements would be accepted as documentation of historical financials by the Build America Bureau. Specific options could include requiring “reviewed” or “compiled” financials statements as opposed to audited and/or requiring tax returns. If an audited financial statement is a must-have requirement, another option to improve access would be to require just one year of such statements, as opposed to five – that is at least a potentially doable task for a small business to accomplish after the fact.

The Infrastructure for Rebuilding America (INFRA) grant program is funded at $1 billion in 2020. In the 2020 program notice, U.S. DOT emphasizes the importance of rural projects and pledges to integrate consideration of challenges faced by rural areas, as well as considering rural awards in excess of the 25% statutory minimum. These are excellent department-level policy steps that are applauded by the ASLRRA. Each year INFRA reserves a maximum of 10% of funding for small projects through awards of $5 to $25 million and a number of rural rail projects have received grants through this small project category. INFRA is also subject to an all-time cap of $500 million on grants to non-highway projects such as freight rail. Between these two Congressionally-established
caps, the potential for awards to rural rail projects is limited. In the context of the ROUTES initiative the Administration may make policy proposals and encourage Congress to loosen these limits in the next reauthorization bill in order to enable more funding through INFRA to rural rail projects. Enabling Class II and III railroads to be direct applicants for and recipients of INFRA funds would also facilitate greater access to INFRA for rural railroad borrowers.

The Port and Intermodal Improvement Program, managed by the DOT’s Maritime Administration (MARAD), received its first appropriation in 2019. The program Notice published by MARAD defined an eligible coastal seaport as “...a seaport capable of receiving deep-draft vessels (drafting greater or equal to 20 feet) from a foreign or domestic port.” The program language restricts a number of small coastal ports, which seems contrary to Congressional intent. For example, ASLRRA member the Alaska Railroad is the sole provider of freight rail and passenger service in the state of Alaska and with small ports in its service area. However, the grant notice language served to exclude many rural Alaskan ports from being eligible to apply for this funding, for example the port facility at Seward, the southernmost point of the railroad. Rural ports in Alaska support the transfer of freight cargoes for defense, commercial fishing, tourism, agriculture and forestry, mining and oil and gas energy production. Many of these ports are in economically distressed areas and many are within or directly support tribal communities. Through the 2020 appropriations law, Congress has provided $225 million in funds for the next round of this program and the 2020 National Defense Authorization Act updated program authorizing language. Both laws added language emphasizing the importance of supporting small projects and rural communities. In alignment with the ROUTES initiative, DOT should consider modifying this restriction in the 2020 round of
the Port and Intermodal Improvement Program so that these important rural freight port facilities are not again excluded from applying.

Respectfully submitted,

Chuck Baker, President
American Short Line and Regional Railroad Association
50 F Street N.W., Suite 500
Washington, D.C. 20001-1564
Telephone 202-585-3432
Email: cbaker@aslrra.org
Appendix A

DRAFT of Short Line Railroad Disaster Relief Program

PURPOSE: Provide an authorization for general fund appropriations for FRA-administered natural disaster relief impacting Class II and III short line railroads. FHWA and FTA have permanent statutory programs for disaster relief, but FRA does not.

SECTION ____ . SHORT LINE RAILROAD EMERGENCY RELIEF PROGRAM

(a) DEFINITIONS. In this section the following definitions shall apply:

(1) The term “emergency” means a natural disaster affecting a wide area (such as a flood, hurricane, tornado, tidal wave, earthquake, severe storm, landslide, avalanche, or forest fire) or a catastrophic failure from any external cause, as a result of which –

(A) The Governor of a State has declared an emergency and the Secretary has concurred; or

(B) The President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) The term “short line railroad” means a Class II railroad or a Class III railroad as such terms are defined by the Surface Transportation Board.

(b) GENERAL AUTHORITY. The Secretary may make grants and enter into contracts and other agreements with a railroad directly or with a unit of local government (including agreements with any department, agency, or instrumentality of the Government) for capital projects to protect, repair, reconstruct, or replace equipment, infrastructure, and facilities that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency. Grants may be provided on a reimbursable basis or advance funding basis, at the option of the Secretary.

(c) COORDINATION OF EMERGENCY FUNDS. Funds appropriated to carry out this section shall be in addition to any other funds available and shall not affect the ability of any other agency of the Government, a State agency, a local governmental entity or organization, or person to provide any other funds otherwise authorized by law.

(d) GRANT REQUIREMENTS. (1) A grant awarded under this section that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. (2) The Secretary may retain up to one-half of 1 percent of the funds appropriated under this section to fund the costs of project management oversight by the Administrator of the Federal Railroad Administration. (3) The provisions of section 24312 of title 49, United States Code, shall apply to grantees assisted under this section.

(e) GOVERNMENT SHARE OF COSTS. A grant, contract, or other agreement for a capital project under this section shall be for not more than 80 percent of the project cost, as determined by the Secretary. The Non-Federal share of the project cost shall be provided in cash, equipment, or supplies. The Secretary may waive, in whole or in part, the non-Federal share.
(f) AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Secretary for grants under this section such sums as may be necessary.