

AASHTO Analysis of the House Transportation and Infrastructure Committee Bill
**Investing in a New Vision for the Environment and Surface
Transportation in America (INVEST in America) Act *as introduced***

June 13, 2020

BILL FEATURES THAT ALIGN WITH AASHTO POLICY GOALS

The House T&I Committee is acting three months prior to expiration of the FAST Act, with the goal of ensuring timely reauthorization that prevents short-term disruptions to the program. The INVEST in America Act also provides a substantial funding increase for all surface transportation programs, including a 31 percent increase in Federal-aid Highway Program funding (\$47.1 billion in FY 2020 to \$69.1 billion in FY 2021), while also recognizing the state DOTs' need for COVID-19 relief in FY 2021.

- To assist with COVID-19 relief, the bill provides:
 - A clean one-year extension for the first year to defer programmatic changes.
 - Provides an additional \$14.7 billion for highways and \$5.8 billion for transit with extremely flexible eligibilities including operations and administrative expenses.
 - Increases federal share to 100 percent for all highway, transit, and highway safety programs.
- All core program categories from the FAST Act are retained.
- The Highway Safety Improvement Program's pre-FAST Act flexibility is returned for public awareness, traffic safety enforcement, emergency services, and safety research for experimental efforts for up to 10 percent of total HSIP funding.
- Eligibilities for projects that improve system resiliency is greatly expanded from the National Highway Performance Program, Surface Transportation Block Grant Program, and the Emergency Relief Program.
- Full flexibility is provided for intermodal and non-highway freight projects for the formula freight program, and more flexibility is provided to designate critical urban and rural freight corridors.
- Suballocated Surface Transportation Block Grant Program funding is maintained at 55 percent throughout the five years.
- Highway research program funding is increased by 61 percent between the first and second years compared to the FAST Act, to prevent "crowding out" existing programs from new research needs.
- Extends the FAST Act provision allowing additional funds deposited into the Highway Trust Fund to be distributed through existing statutory formulas.
- Greater consideration and resources are given to accessibility, reflecting AASHTO's policy vision which states that a safe, well-functioning, and resilient system is the foundation of a strong economy and quality of life benefits such as access to employment, education, recreational, and health services opportunities.

- Provides flexible match for Transportation Alternative Program where individual projects can be funded with a 100 percent federal share as long as overall program federal share is maintained at 80 percent; allows state DOTs to set aside up to five percent of the program's funds to assist project sponsors with improving their applications and expediting project delivery.
- For the Emergency Relief program, wildfires are classified as a natural disaster, and states can submit an application that includes a comprehensive list of all eligible project sites and repair costs by not later than six years after the natural disaster or catastrophic failure, rather than two years under current law.
- Requires the U.S. Access Board to finalize Public Rights-of-Way Accessibility Guidelines (PROWAG).
- Increases funding for state surface transportation system funding pilots and establishes a new national-level pilot program.
- Calls for a new transportation workforce development task force.
- Streamlines Buy America for transit by requiring FTA to conduct rolling stock certifications to remove the burden from transit agencies and allows certifications to be used for multiple procurements.
- Reestablishes the freight transportation cooperative research program in conjunction with the National Academies.
- Establishes December 15th as the deadline to make sure FTA apportions formula funds to the states if there is a continuing resolution.
- Restores the state of good repair formula subgrant and increases funding for transit agencies with the oldest buses.
- Creates a new flexible set of Federal rules for mobility on demand services integrated with mobility as a service, allowing agencies to shift urban, rural, and seniors and individuals with disabilities funding to this program.
- Provides robust funding for existing rail programs like Amtrak Northeast Corridor, Amtrak National Network, state-supported routes, CRISI, State-Amtrak Intercity Passenger Rail Committee, and the Northeast Corridor Commission.
- Establishes the Passenger Rail Improvement, Modernization, and Expansion (PRIME) Grant program for state of good repair, service improvement, and rail expansion projects.
- Streamlines the TIFIA application process and timeline and clarifies that the proceeds of a TIFIA loan should be considered as part of the non-federal share if the loan is repayable from non-federal funds.
- Improves attractiveness of the RRIF program by providing federal subsidy for credit risk premiums similar to TIFIA.
- Increases transparency of the costs Amtrak assigns to states for state-supported routes and requires Amtrak to engage in early stakeholder engagement when developing new state-supported routes; also allows states and Amtrak to pursue an alternative cost allocation method to facilitate the development, construction, and operation of new state-supported routes.

BILL FEATURES THAT CAUSE CONCERN

The INVEST in America Act significantly increases administrative burdens to state DOTs compared to prior surface transportation bills that sought to provide additional flexibilities and improve the efficiency of the surface transportation program. One of AASHTO's core principles calls for increased flexibility, reduced program burdens, and improved delivery of projects, including increasing programmatic and funding flexibility to plan, design, construct and operate the surface transportation system; unfortunately, this principle is not reflected in the INVEST in America Act.

- Only 88.7 percent of Highway Trust Fund highway dollars are provided by formula, compared to 92 percent in the FAST Act.
 - Recommendation: Increase formula share to at least 90 percent similar to the Senate's America's Transportation Infrastructure Act.
- Transferability between core formula programs is drastically restricted.
 - Recommendation: Funding flexibility provided through transferability is a fundamental element of the Federal-aid Highway Program and should not be reduced.
- For new capacity projects allowing single-occupancy vehicles, states are required to demonstrate progress in achieving a state of good repair on the National Highway System and also demonstrate that the project supports the achievement of the state's performance targets and is more cost-effective than operational improvements, new mass transit facilities, or the construction of a freight movement project would be.
 - Recommendation: The current performance management framework and asset management plans should be retained as they have resulted in a continued emphasis on managing existing assets, while not adding new capacity in much of the system.
- Establishes new national bridge improvement goals and sets a new requirement that each state must obligate no less than 20 percent of its cumulative annual NHPP and STP apportionment (in any combination of the two), excluding STP funds suballocated by population and transportation alternatives set-aside funds, on bridge projects or bundles of bridge projects.
 - Recommendation: Leverage asset management plans and programs already employed by state DOTs to improve the condition and performance of bridges.
- Prohibits state DOTs from establishing targets that fail to demonstrate constant or improved performance for the five existing safety performance measures or the newly-developed GHG measures.
 - Recommendation: Allow state DOTs to establish targets based upon current data, events, and facts.
- A new Carbon Pollution Reduction Program in the Federal-aid Highway Program allows transit and passenger rail funding eligibility out of the Highway Account of the Highway Trust Fund.
 - Recommendation: Convert the funding source for this program from the Highway Trust Fund to the General Fund, given the broad modal eligibilities of the new program.

- A new performance measures on greenhouse gas emission is created, with flexibility incentives and penalties for high and low performing states.
 - Recommendation: USDOT can already measure and report on the GHG pollution being generated within each state through current data provided to it on vehicle use and mix. If the goal is to reduce GHG pollution from the transportation sector, then the most direct and efficient way to accomplish this goal is through an increase in the CAFE standards regulated by USEPA and NHTSA.
- The bill does not in any way address program and project delivery improvements.
 - Recommendation: Add a new subtitle to the bill on improving project delivery to:
 - Make All Categorical Exclusions Available for Use by Any Federal Agency
 - Establish Project Delivery Innovation Pilot Program
 - Allow Programmatic Air Quality Conformity Determinations
 - Require Air Quality Conformity Only for the Current Air Quality Standards
 - Enhance Role of Lead Agency in Managing the NEPA Process
 - Allow Delegation of Section 404 Permitting Authority for Transportation Projects
 - Provide a Framework for Exempting Endangered Species Act Projects with Minor Effects
 - Allow Alternatives to Providing “Replacement Parkland” under Section 6(f)
 - Require Interim Guidance to Be Issued at Time of Species Listing, and then a Full Recovery Plan
 - Allow Programmatic Approach to Compliance with Section 404(b)(1) Guidelines
 - Allow Project Sponsors to Serve as “Non-Federal Representatives” in Formal Consultation
 - Section 404 of the Clean Water Act: Streamline Section 404 Compliance for Routine Road Maintenance Activities
- A large number of new discretionary grant programs are carved out from the Highway Trust Fund, taking away dollars from core formula programs and increasing the administrative bottleneck at USDOT.
 - Recommendation: Consider consolidating similar programs or expanding eligibility of existing programs to include these eligibilities.
- The federal-state fund swap is restricted to states who can certify that prevailing wage and Buy America requirements comparable to federal requirements are in place.
 - Recommendation: This practice is taken on voluntarily by states and localities in order to spend federal dollars in a timely manner and assist local priorities while enabling federal dollars to still meet all federal requirements. As such, this new requirement will actually impede effective project delivery and use of federal dollars by local governments.
- Various restrictions in tolling are introduced including limitations on use of toll revenues.
 - Recommendation: Consider broadening the limitation on revenues to any transportation activities to prevent non-transportation uses of such revenues. In addition, greater tolling flexibility should be provided to maximize revenue-raising opportunities in light of federal funding challenges

- Creates a “dig once” policy for broadband infrastructure deployment, which may impose new program burdens.
 - Recommendation: Recognize the appropriate role of state DOTs in broadband deployment, and do not discourage successful collaborations between state DOTs and broadband providers already in place without federal intervention.
- Although non-formula programs increase by 113 percent from FY 2021 to FY 2022, core formula programs only see a 27 percent increase.
 - Recommendation: Balance out program funding increases in a proportional manner.
- Suballocation is increased for STP Setaside (Transportation Alternatives) from 50 percent in the FAST Act to 66 percent of total program dollars.
 - Recommendation: Maintain current suballocation share similar to STP.
- Materials flexibility may be reduced with a focus on green materials.
 - Recommendation: States should be provided the ability and flexibility to sufficiently test and evaluate any proposal to utilize innovative materials, as states’ exacting processes for evaluating materials serve to ensure long-term safety, performance, and competition.
- Requires plans and specifications for all Federal-aid highways to take into consideration context sensitive design principles.
 - Recommendation: Encourage but do not make this a requirement. As state already use context sensitive design principles, a federal mandate will reduce flexibility and introduce specific oversight and reporting requirements, unnecessarily slowing down project delivery and increasing costs to the program.
- The existing provision in allowing CMAQ funds to be used for Amtrak operating expenses on state-supported routes in some circumstances gets a three-year sunset unless EPA and DOT jointly decide each year that the project demonstrates net air quality benefits.
 - Recommendation: Allow for a three-year interval between EPA and DOT reviews.