

AASHTO Analysis of the Senate EPW's America's Transportation Infrastructure Act of 2019

September 4, 2019

BILL OVERVIEW

- At the end of July, the Senate Environment and Public Works Committee passed its much-anticipated five-year federal highway program reauthorization entitled “America’s Transportation Infrastructure Act of 2019” by a vote of 21 to 0.
- The bill authorizes \$287 billion from the Highway Trust Fund from 2021 to 2025, including \$249 billion for highway formula programs. In addition, \$7 billion in General Funds are authorized, bringing the total top-line highway funding to \$294 billion over five years.
- ATIA apportions 90 percent of total highway dollars through formulas-based programs. In addition, a variety of new programmatic features of this bill include an increased focus on safety, wildlife crossing mitigation, resiliency, greenhouse gas emission reductions, and bridge investment.
- These new programs receive Highway Trust Fund dollars, and include highly targeted eligibilities even for formula portions.
- All current core formula programs are retained with a 10 percent funding increase (\$4.5 billion) in the first year of ATIA compared to the last year of the FAST Act. This compares to overall contract authority growth of 17 percent (\$8.0 billion) in the first year of ATIA, with a larger proportional share of Highway Trust Fund support going to non-formula programs such as discretionary grant programs and pilot programs.
- The full surface transportation bill must include accompanying titles from the Senate Banking and Commerce Committees with jurisdiction over transit, and safety and rail, respectively.
- Crucially, the Senate Finance Committee must come up with additional revenues for the Highway Trust Fund.
- By establishing investment targets for the federal highway program, ATIA will require about \$83 billion in additional Highway Trust Fund revenues for the Highway Account. A proportional increase for the Mass Transit Account is about \$26 billion.
- Total revenue increase needed—above and beyond current receipts—for HTF through September 2025 to support this bill is estimated at \$110 billion.

BILL FEATURES THAT ALIGN WITH AASHTO POLICY GOALS

- The Senate EPW Committee has acted 14 months prior to expiration of the FAST Act, with the goal of ensuring timely reauthorization that prevents short-term disruptions to the program.
- All core program categories from the FAST Act are retained with existing federal share and transferability.
- Formula funding is provided at 90 percent of total authorized funding from the Highway Trust Fund. This is slightly less than 92 percent currently in MAP-21 and FAST Act.
- FAST Act rescission of \$7.6 billion of unobligated contract authority scheduled for July 1, 2020 is fully repealed.

- Program and project delivery is improved through allowance for sharing of Categorical Exclusions, reduced burden on Stewardship and Oversight Agreements, further flexibility in the operational right-of-way, and codification of One Federal Decision which aims for a two-year environmental review goal for major projects and a single record-of-decision, among others.
- 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 25 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.
- More flexibility is provided for intermodal and non-highway freight projects for both formula and discretionary freight programs with a 30 percent cap, and more flexibility is provided to designate critical urban and rural freight corridors.
- Suballocated Surface Transportation Block Grant Program funding is frozen at 55 percent throughout the five years.
- Highway research program funding is increased by 27 percent in the first year compared to the FAST Act.
- Repeals the “ten-year rule” regarding preliminary engineering, which requires states to return federal funds if on-site construction or acquisition of right-of-way is not commenced within ten years after preliminary engineering.
- Up to seven percent of STBGP Setaside (Transportation Alternatives) can be used by state DOTs to provide technical assistance.
- Operations support from CMAQ is expanded to remove time limitation in smaller urbanized areas and to allow for state-supported Amtrak routes.
- Broadens workforce development programs to support pre-apprenticeships, apprenticeships, OTJ training opportunities, industry outreach and partnership programs, and vocational schools to the eligible workforce training activities.
- The Surface Transportation Systems Funding Alternatives program sees increased funding and federal share, along with a new national research and testing program to examine alternative user fees.
- Expands the Interstate tolling pilot program to urbanized areas, and creates a toll credit exchange program.
- The administrative burden on states is lessened by reducing the frequency of federal reviews on the work zones process.

BILL FEATURES THAT CAUSE CONCERN

- A large number of new highway programs are carved out from the Highway Trust Fund, taking away dollars from core formula programs.
- If the total dollar amount of the bill is reduced, there is real risk for core formula dollars to fall below FAST Act levels.
- Although overall contract authority in the bill grows by 17 percent (\$8.0 billion) in 2021, funding for existing core formula programs only increases by 10 percent (\$4.5 billion).

- New formula programs on safety and carbon reduction come with very specific eligibilities.
- The number of USDOT-administered discretionary grant and pilot programs are greatly expanded, placing more project selection control with USDOT and creating greater administrative demands.
- Suballocation is increased for the following programs, taking funding discretion away from states:
 - STBGP Setaside (Transportation Alternatives) increased from 50 percent in FAST Act to 57.5 percent (\$1.2 billion in 2021)
 - New formula carbon reduction program at 65 percent of \$600 million per year
 - New formula safety incentive program at 65 percent of \$500 million per year
- TIFIA eligibility is greatly expanded to include airport projects plus commercial and residential development near transportation hubs.
- One Federal Decision's two-year time limitations may cause unintended issues for state DOTs such as conducting only one build alternative or selecting the preferred alternative very early in the NEPA process.
- By introducing additional requirements to the Buy America waiver process, the bill may result in fewer waivers being provided.
- Unfunded research directives are made that will reduce funding flexibility in the traditional federal research programs. Examples include the Vulnerable Road User Research Plan, Emerging Technology Research Pilot Program, use of calcined bauxite, and accelerating use of digital construction management systems.
- Requires states and MPOs to use 2.5 percent of SP&R and Metropolitan Planning funds, respectively, to adopt and implement Complete Streets standards and processes.
- Establishes a new pilot program that would facilitate the development and procurement of a data set and tool that states and MPOs could use to analyze accessibility as part of their planning process. This is redundant to the already-existing National Accessibility Evaluation Pooled-fund Study with 12 state DOT participants and FHWA.

BILL FEATURES NOT ADDRESSED IN AASHTO POLICY

- Carbon reduction is a major emphasis area of the bill, creating new competitive grant programs for alternative fuel infrastructure and idling and emissions reduction at port facilities, formula funds directed to reduction of on-road mobile sources of carbon, and carbon utilization and air capture research.
- No changes to the MAP-21 performance management framework are made but new elements are introduced:
 - Exempts the MAP-21 requirements for lower population density states (below US average) with no urbanized areas over 200,000 people
 - New incentive programs on carbon reduction and performance provide additional funding to states achieving certain results
- Major emphasis is given to vehicle-wildlife crash prevention and management efforts through funding eligibilities from various programs such as STBGP and a dedicated pilot program.

- Requires state freight plans to include commercial motor vehicle parking assessments, the impacts of freight on local environment and wildlife habitat loss, the impact of extreme weather and natural disasters on freight mobility, and mitigation of freight railroad impact on communities to the state freight plans.
- Establishes a new pilot program that looks at a data-driven project prioritization process for states and MPOs to use in state and MPO long-range transportation plans, though this may be more relevant for TIP/STIP development.
- Encourages use of social media in the public involvement process for metropolitan and statewide planning activities.

AASHTO POLICY NOT ADDRESSED IN THE BILL

- The bill does not address substantive environmental project delivery improvements that can greatly improve the environmental review process, such as those involving the Clean Air Act and Clean Water Act.
- There is no mention of preserving the 5.9GHz spectrum for transportation safety purposes, or clarifying state prerogatives on wireless and wireline broadband deployment.
- While FHWA is directed to continue issuing eligibility letters for roadside hardware until such time as a third-party verification process is developed, it does not reestablish FHWA as the provider of technical assistance or permanent reviewer of crash test results as desired by AASHTO.
- For conformity, the bill does not address allowing transportation agencies to use only the most recent standard for a given pollutant in the National Ambient Air Quality Standards when a new standard is established.
- The FAST Act's problematic exemptions for overweight emergency vehicles and overweight heavy-duty tow and recovery vehicles are not removed or at least altered to allow permitting flexibility.
- Preservation of state and local government authority to regulate operational safety of autonomous vehicles and to manage data collected from transportation technologies are not addressed.
- The bill does not require establishment of consistent requirements, commitments, and time frames across all public and private railroad owners to facilitate transportation work within and across railroad rights of way, nor the USDOT authority to enforce those provisions with the railroads.
- The bill does not direct FHWA to remove fiscal constraint regulatory requirements that are not compelled by statute and reduce the burden associated with them through such methods as applying them to fewer decision points and shortening applicable time frames.
- The bill does not authorize the adoption in regulation of the Public Rights of Way Accessibility Guidelines to ensure that transportation projects most appropriately accommodate people with disabilities.
- The bill does not allow for the relocation of nonconforming billboards when impacted by a highway project nor allows states to exit the Bonus Act program without penalty.
- The bill does not prohibit the Federal Communications Commission from issuing a one-size-fits-all federal preemption including uniform "shot clocks" and application fee caps in order

to provide wireless and wireline broadband access—including 5G small cell nodes—in transportation rights-of-way and other assets owned and operated by states.

- The National Cooperative Freight Research Program is not reinstated.