## ARTBA Analysis

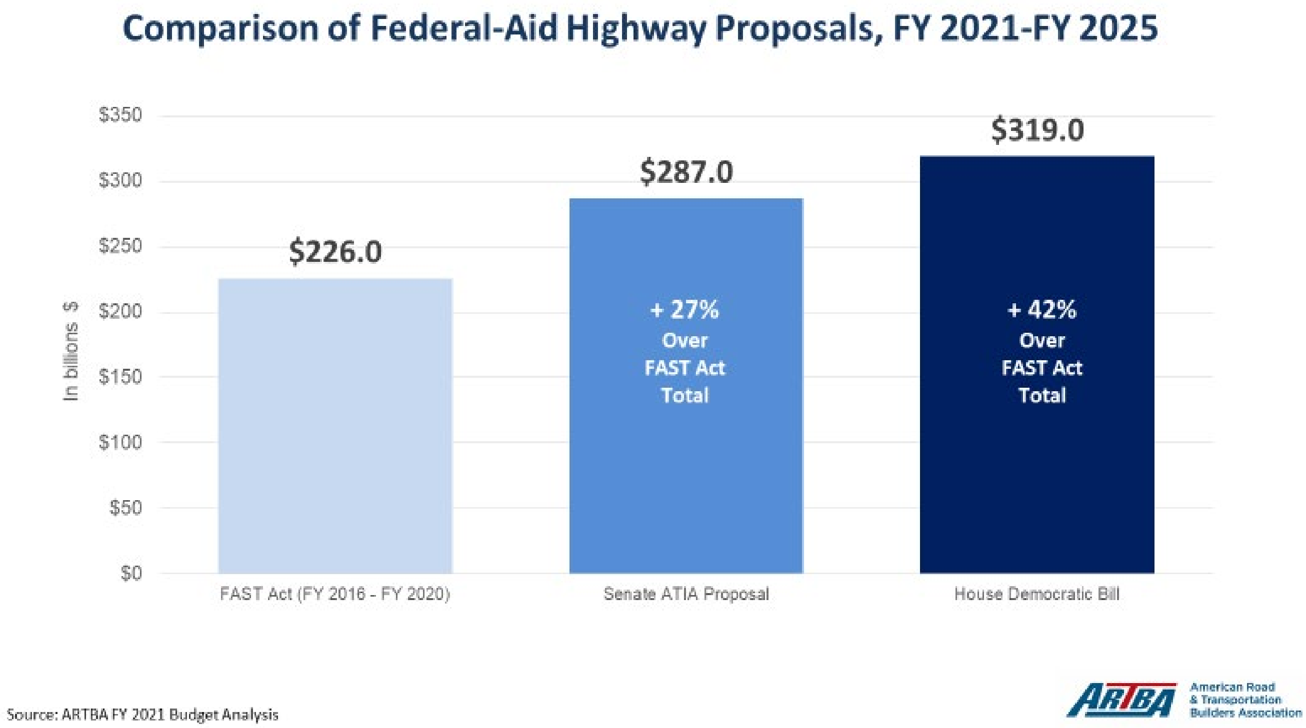
# House Surface Transportation Reauthorization Bill: INVEST in America Act

The House Transportation & Infrastructure (T&I) Committee June 18 approved a five-year, $494 billion reauthorization of the federal surface transportation program. The Investing in a New Vision for the Environment and Surface Transportation in America Act (INVEST) Act would increase highway and public transportation investment by 42 and 72 percent respectively. The proposal, authored by T&I Committee Chairman Peter DeFazio (D-Ore.) received unanimous support from committee Democrats, while all Republicans were opposed.

The $494 billion is broken down by mode:

- $319 billion for highway investments (a $96 billion increase);
- $105 billion for public transportation improvements (a $44 billion increase);
- $60 billion for rail investments (a $50 billion increase); and
- $10 billion for National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration programs (a $3 billion increase).

With full House action on the bill scheduled for the last week of June, Congress is moving one step closer to passing a new five-year surface transportation reauthorization before the Sept. 30 expiration of current law, the Fixing America's Surface Transportation (FAST) Act. The Senate Environment & Public Works (EPW) Committee passed the highway portion of a reauthorization bill, America's Transportation Investment Act (ATIA), July 29, 2019. It awaits action from three other committees and the commitment of Senate floor time. ARTBA Chairman Steve McGough June 4 testified before the EPW committee on the economic benefits of a long-term reauthorization bill, as the nation begins the recovery phase from the COVID-19 pandemic.




## First Year of the INVEST Act Looks Familiar

The INVEST Act is structured to provide certainty for states and localities in FY 21 by delaying new policy changes and programs until FY 22. Instead, FY 21 would essentially serve as an extension of current FAST Act programs, but with $20.5 billion in increased investment levels—$14.7 billion for highways and $5.8 billion for public transit. FY 21 would also provide increased flexibility for states and localities.

The purpose of the one-year extension is to allow for states and transit agencies to continue recovering from the COVID-19 pandemic. The House passed its fourth major round of COVID-19 response legislation, the HEROES Act, in May. It includes $15 billion for highways and state departments of transportation and $15.75 billion for transit agencies. These funds could be used for both capital investments and operations and administrative costs. The INVEST Act builds on the HEROES Act by allowing the $20.5 billion in new FY 21 highway and public transit spending to be used for both capital and operations. The plan would also wave the federal match on all FY 21 funding, opening roughly $10 billion-$12 billion in state revenues that would otherwise go towards their share of transportation capital improvements.

**Remaining Four Years Features New Highway Programs & Policies**

Marked by the greater eligibility for climate-focused and multi-modal projects, the INVEST Act upholds a pledge made by T&I Committee Chairman DeFazio and other Democratic party leaders to release a transformative and “green” surface transportation plan. The investment levels would be the highest of any surface transportation proposal and 89 percent of funds would be distributed to states via formula versus 92 percent currently. However, much of the increased funding would go toward new discretionary initiatives. Other programs that were added in the FAST Act would also be overhauled or broadened in scope and eligibility, altering the programs' overall focus.

The following are key policy and programmatic changes in the INVEST Act of interest to ARTBA members:

## Highways

**National Highway Performance Program (NHPP)**: The NHPP is the largest category of federal spending and focuses resources on improving the National Highway System. The INVEST act would broadens the eligibility for use of NHPP funds to include:

- environmental sustainability, wildlife crossings, resiliency and improving evacuation routes;
- transportation system access;
- combating climate change, with projects like electric vehicle (EV) charging stations, that help reduce greenhouse gas emissions; and
- safety barriers and safety netting on bridges.

**Fix-It-First**: Within the NHPP, any state pursuing a project to increase single occupancy capacity must first demonstrate movement toward good repair, along with incorporating a cost-benefit analysis showing a transit project or other operational or non-single occupancy freight improvement would not be more beneficial.

**Surface Transportation Program (STP)**: This is the most flexible category of highway spending and allows states to use funds for both highway and public transportation activities. Like the NHPP program, the INVEST act would expand eligibility to climate, resiliency and wildlife crossing projects. The STP would also make funding available for transit projects that increase bus frequency. More than half of the STP would be allocated to each state based on population.

**Bridge Program**: At least 20 percent of a state's NHPP and post-population STP distribution funding would be set aside for bridges. The T&I Committee estimates the two set-asides to be at least $28 billion over the final four years of the bill. The goal of this new mandate would be to bring bridges up to a state of good repair, while limiting trips across poor facilities. It would direct the U.S. Department of Transportation (U.S. DOT) to develop and publish online an annual bridge report, highlighting state performance and where investments need to be prioritized.

**Highway Safety Improvement Program (HSIP)**: This program is currently dedicated to support highway safety infrastructure activities. The House proposal would expand eligibility of the program to promote walking and bicycling among young people and other non-infrastructure activities. It would allow for 10 percent of HSIP revenue to be used for non-physical safety improvements such as communications campaigns to help educate drivers on issues like impaired driving.

**National Highway Freight Program (NHFP)**: Created in the FAST Act, the NHFP, which focuses on increased efficiency of freight movement, would see a 38 percent increase in funding as well as expanded program eligibility for activities like climate and resiliency. It would also allow 100 percent of the funding to be used for multi-modal projects, up from 10 percent in the FAST Act.

**Carbon Pollution Reduction Program (CPRP)**: Create a new carbon pollution apportionment program, providing grants for projects that reduce pollution and improve air quality standards. The U.S. DOT would publish an annual report tracking progress. The top performing states would receive more flexibility in spending CPRP funds, while the states at the bottom of the list would be required to spend additional funds on reducing carbon emissions.

**Pre-Disaster Mitigation Program**: Requires states and Metropolitan Planning Organizations (MPOs) to include climate change mitigation strategies in their long-range plans. States and MPOs must identify projects vulnerable too natural disasters and climate change impacts for eligibility in this new funding program.

**STATE BY STATE APPORTIONMENT CHARTS**

## Discretionary Grant Programs

The INVEST Act also contains a range of new and old discretionary grant programs to be distributed by the U.S. secretary of transportation:

**Federal & Tribal Lands Major Projects**: Allocates $400 million annually, a 300 percent increase from the FAST Act for major construction improvements. The funds would be 100 percent federal and split evenly between tribal and federal lands.

**Projects of National & Regional Significance (PNRS)**: PNRS would replace the discretionary freight program established in the FAST Act. Unlike existing law, PNRS would be a fully multi-modal discretionary grant program and would not prioritize improving goods movement. The $9 billion from FY 22-25 represents a 100 percent increase in funding compared to the former highway freight program. The PNRS funds would be dedicated for projects based on a number of criteria, including highway congestion relief, improving state of good repair, connecting multiple modes, helping improve poverty-stricken areas and environmental benefits.

**Community Transportation Investment Grant Program**: Creates a new discretionary highway and public transit grant program targeted at localities, transit agencies and MPOs. The four-year, $2.4 billion program would aim for projects that improve safety, state of good repair, accessibility and environmental quality at the local level.

The U.S. DOT secretary would be required to publicly release the criteria the agency established for choosing projects, including reductions in fatalities, improved pavement and bridge conditions and increased environmental quality, among others.

**Grants for Charging and Fueling Infrastructure to Modernize and Reconnect America for the 21st Century**: Establishes a $350 million annual competitive grant program to deploy electric vehicle charging and hydrogen fueling infrastructure.

**Community Climate Innovation Grants**: Establishes a new local competitive grant program with focus on the reduction of greenhouse gas emissions. The U.S. DOT secretary would have discretion over the choice of projects, but should prioritize projects that first and foremost reduce the most greenhouse gas emissions. The program would receive $1 billion over the last four years of the bill.

**Metro Performance Program**: Authorizes $750 million per year from FY 23-25 for new program to support local projects chosen by MPOs and awarded to those deemed good stewards of federal highway dollars.

**Gridlock Reduction Grant Program**: The new one-year, $250 million program aims to reduce congestion in large metropolitan areas by using innovative and multi-modal solutions. Half of the funding is dedicated to freight mobility projects.

**Rebuild Rural Grant Program**: Dedicates $250 million in 2022 only for a new program toward rural roads and off-system bridges, investing in projects addressing safety, wildlife crossings, and jobs access in rural areas.

**Parking for Commercial Motor Vehicles**: Authorizes $250 million over the life of the bill for a new initiative to address commercial vehicle and large truck parking issues.

**Active Transportation Connectivity Grant Program**: Dedicates $250 million in 2024 only for a new program to connect pedestrian and bike routes within communities and between communities.

Among other notable INVEST Act provisions*:*

**Planning, Design & Reporting**

**Transparency**: Creates a user-friendly website featuring a map that plots types of projects by congressional district for all active federal highway improvement projects over $5 million. Such transparency provisions mirror those included in ARTBA's 2019 FAST Act reauthorization task force report.

**Context Sensitive Design**: Shifts roadway design standards from accounting for "planned future traffic" to "future operational performance of the facility" and requires the use of "context sensitive design principles." This section emphasizes flexibility in roadway design for state and local agencies.

U.S. DOT would be directed to work with the American Association of State Highway & Transportation Officials (AASHTO) on related guidance to meet the needs of multiple modes of transportation "in an appropriate balance," while considering "the needs of users of all ages and abilities of a particular roadway." The T&I committee notes these users may include pedestrians, bicyclists, public transit users, children, older individuals, individuals with disabilities, motorists and freight vehicles.

**Megaprojects**: Requires agencies seeking federal funds for projects of $2 billion or more to submit a comprehensive risk management plan to U.S. DOT and establishes a peer group to "give expert advice on the scientific, technical, and project management aspects of the megaproject."

**Metropolitan & Statewide Transportation Planning**: Directs states and MPOs to consider climate change issues in both statewide and long-range planning.

**National Goals & Performance Management Measures**: Requires U.S. DOT to establish new performance measures for greenhouse gas emissions and transportation system access.

**Stormwater Best Management Practices**: Authorizes U.S. DOT and the Environmental Protection Agency (EPA) to commission a Transportation Research Board study on best practices for stormwater runoff.

## Innovative Contracting & Finance

**Innovative Project Delivery & Alternative Contracting**: Adds to the types of "innovative" highway and bridge projects eligible to receive an increased federal share of funding. These would include bridges utilizing technologies to "extend service life and reduce preservation costs" and "innovative pavement materials that demonstrate reductions in greenhouse gas emissions through sequestration or innovative manufacturing processes."

The bill would enable use of alternative contracting methods currently used by states, such as design-build and construction manager general contractor (CMGC) for FHWA's Federal Lands projects.

**Tolling & High Occupancy Vehicles (HOV) Facilities**: Preserves the ability of public authorities to toll certain facilities and roadway improvements with U.S. DOT authorization, but would require a tolling agreement beforehand. Through public comment and other means, the U.S. DOT would need to ensure the tolling authority has considered factors such as congestion impacts, air quality, public transportation, environmental justice and equity, freight movement and business impacts. This provision also states that approval of tolling is considered a major federal action under the National Environmental Policy Act (NEPA).

The bill allows variable (congestion) pricing of an existing non-tolled lanes on the National Highway System to a tolled facility, providing the above requirements are met and the combination of the newly-tolled facility, public transit and non-tolled alternatives are "reasonably expected to improve the operation of the… corridor." It would also repeal current, similar toll pilot programs. It also includes new requirements for reports on the tolled facilities, "degraded" corridors (i.e. those underperforming at peak travel times), consultation with MPOs, use of surplus revenues, interoperability of electronic toll collection and sanctions for non-compliance.

The bill would alter requirements for high occupancy vehicle (HOV) lanes so the only single-passenger vehicles eligible would be low emission.

**TIFIA Program**: Revises the Transportation Infrastructure Finance & Innovation Act (TIFIA) program in several ways:

- Raising the threshold for requiring multiple investment grade ratings from $75 million to $150 million in debt and credit;
- Allowing state and localities to use TIFIA loan proceeds towards their non-federal share of certain projects;
- Setting parameters for U.S. DOT to issue expedited decisions on secured loan applications from public agencies; and
- Requiring the secretary of transportation to post monthly status reports on pending loan applications and approved loans.

**Every Day Counts (EDC)**: Codifies FHWA's EDC program, which has promoted innovations and technologies relating to project delivery since 2010, and has included participation of ARTBA and other stakeholders. The bill would establish a parallel program under the Federal Transit Administration (FTA).

Special Experimental Projects (SEP): Under FHWA's SEP programs, state DOTs can request permission to use contracting methods on federal-aid projects not otherwise allowed by law. The bill would require FHWA to accept and post public comments and other documents relating to these applications.

**Build America Bureau**: Requires U.S. DOT's Build America Bureau, created in the FAST Act, to proactively communicate with rural communities about federal funding and financing opportunities under the Bureau's purview.

## Contracting & Workforce

**Disadvantaged Business Program (DBE) Program**: Reauthorizes the DBE program consistent with past practice. Formalizing recent inflationary adjustments, it raises the limit for eligibility in the program to maximum average annual gross receipts during the preceding three fiscal years to $26,290,000. The proposal also renews the direction for U.S. DOT to increase enforcement of DBE-related prompt payment rules and regulations.

**Hours of Service (HOS):** Recently enacted changes to the HOS rules would be suspended until 60 days after a congressionally mandated "comprehensive review" by the Federal Motor Carrier Safety Administration (FMCSA). All existing exemptions from the HOS rules, whether granted by legislation or regulation, would be reviewed, though not suspended, as well. The legislation would also require all drivers covered under current or future exemptions to present U.S. DOT with evidence of participation in a "recognized fatigue management plan." Many ARTBA members are covered by these existing exemptions.

**Buy America**: Require the secretary of transportation to make determinations on certain Buy America waiver requests within 120 days of their submission. The process would include an opportunity for public comment and detailed, publicly available justification once the U.S. DOT secretary makes a decision. The U.S. DOT secretary would also be required to review all standing nationwide waivers at least every five years, again with public comment and published justification.

**Construction Materials**: Directs the U.S. secretary of transportation to appoint a working group reviewing and making recommendations on availability of and access to transportation construction-related materials.

**Workforce &Training**: Directs the U.S. secretary of transportation to establish a task force to evaluate the current and future state of the surface transportation workforce and make recommendations for addressing related needs.

The bill would authorize the U.S. secretary of transportation to dedicate up to $10,000,000 in administrative funds to establish surface transportation workforce training programs with states. This provision builds on a recent partnership among FHWA, the U.S. Department of Labor, AASHTO, ARTBA, other associations and state workforce development boards. State transportation departments could also use a small amount of federal-aid program funds to participate.

**Hiring Preferences**: Resurrects Obama administration programs allowing states and localities to mandate certain hiring preferences on federal-aid highway and transit projects. The Trump Administration ended these programs in 2017.

## Research, Studies & Pilot Programs

**Research**: Proposes a $7.5 million increase in funding over the final year of FAST Act for University Transportation Centers, which would receive $96,000,000 each year from FY 22- 25.

The bill also establishes a grant program for universities researching "green" construction materials

**Freight Transportation Fee**: Establishes a joint task force between the U.S. DOT and Internal Revenue Service (IRS) to study establishment of a fee on multimodal freight transportation services, including considering:

- A one percent fee on freight transportation services;
- Identification of entities that would be subject to a fee paid by owners or suppliers of cargo;
- Analysis of administrative capacity of federal agencies and freight to collect a fee; and
- Policy options to prevent fee avoidance.

**Vehicle Miles Traveled (VMT) Pilot Programs**: Expands existing VMT pilot programs to nationwide and includes commercial vehicles.

## Federal Transit Programs Growth

Public transit would receive $105 billion, or a 72 percent increase over FAST Act levels. Incentivizing use and expansion of public transportation is one of the bill's priorities, most notably in transit's share of motor fuel tax revenues. Transit's share of Highway Trust Fund (HTF) spending would increase from 17 percent to 20 percent.

Like highway programs, funds are made available at 100 percent federal share for FY 21.

**Capital Investment Grant (CIG) Program**

The legislation would increase support for the CIG program, including a $958 million increase for FY 21 from the general fund compared to FY 20 levels. It would also receive an emergency authorization to allow the federal share of total project costs to increase by 30 percent in an effort to combat potential lost local revenues due to COVID-19.

In subsequent years, the CIG program is authorized at these levels:

- FY 22: $3,500,000,000
- FY 23: $4,250,000,000
- FY 24: $5,000,000,000
- FY 25: $5,500,000,000

Other policy changes are included to address the lag time between application and grant award, including:

-streamlining of the CIG application process
-raising the cost share back to 80 percent;
-providing new transparency measures during the application process

**Federal Rail Programs Would Increase Nearly 500 Percent, Subject to Annual Appropriations**

Rail programs would receive $60 billion with an emphasis on handling the state of good repair backlog. This investment, if appropriated, would be a 485 percent increase over the FAST Act.

Amtrak funding would total $29 billion over five years:

- $13.1 billion designated for Amtrak Northeast Corridor grants; and
- $16.2 billion authorized for Amtrak National Network grants.

The Railroad Rehabilitation & Improvement Financing (RRIF) program would be authorized at $30,000,000 for FY 21-25, a 70 percent increase from the FAST Act. It would be amended to include $150 million to help borrowers pay credit risk premiums and $70 million to refund credit risk premiums of certain past loans.

The INVEST in America Act would create a new discretionary grant program called Passenger Rail Improvement, Modernization & Enhancement (PRIME) grants, which would support capital projects that improve the state of good repair, operational performance or growth of intercity passenger rail. The discretionary grant program would be funded at $19 billion over five years.

It would increase support for the Consolidated Rail Infrastructure & Safety Improvements (CRISI) grant program, which would receive $7 billion over five years—up from $1.2 billion under the FAST Act. CRISI grants fund capital expenditures like highway-rail grade crossing improvements; roadway improvements like medians and barriers, and bridge infrastructure.

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