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Information Alert

State-Federal Relations Division

Senate Approves Major Bipartisan Infrastructure Legislation

August 10, 2021

The Senate approved the $1.2 trillion Infrastructure Investment and Jobs Act with a strong bipartisan vote, 69-30, sending the bill to the House. Though it remains unclear when and if the House will consider the bill, we have put together a quick summary of the numerous provisions and areas of infrastructure impacted. As always, if you have any questions on specific items please do not hesitate to contact NCSL staff: ben.husch@ncsl.org (transportation and energy), kristen.hildreth@ncsl.org (environment), abbie.gruwell@ncsl.org (broadband), and susan.fredrick@ncsl.org (disaster response)

Transportation Infrastructure

Surface Transportation—The bill includes the combination of a new long-term surface transportation reauthorization, largely based upon the bills passed by the Senate Environment and Public Works Committee (roads and bridges) and Commerce (safety and freight), combined with a number of new grant programs (formula and competitive) and increased funding for existing programs (competitive). The bill both retains much of existing federal-aid highway program that provides federal funds to states through formula funding while also significantly increasing the amount of federal funds compared to the last surface transportation reauthorization passed in 2015. The bill's authorization for the main federal-aid highway programs would be $52.5 billion in fiscal 2022, increasing 2% every year and reaching $56.8 billion in fiscal 2026, from the Highway Trust Fund (HTF). The five-year total would be $273.2 billion.

In addition to a full surface transportation reauthorization, the bill includes funding for new and existing grant programs, outside of the federal-aid highway program:

- Bridges—Provides funding for both competitive and formula grant programs that aims to reduce the 100+ billion backlog of necessary bridge repairs.
- RAISE, INFRA, and NIPA (new)—Increases funding for these competitive grant programs run by USDOT. The National Infrastructure Project Assistance grant is a new program that supports multi-modal, multi-jurisdictional projects of national or regional significance.

- Appalachian Highway System—Provides funding to complete the 13 state routes aimed at improving economic development from New York to Alabama.

Public Transit—The bill authorizes nearly $70 billion for public transit through a combination of competitive and formula funds from both the mass transit account of the highway trust fund and general fund appropriations. This increase represents more than a 40% increase over current levels. This includes:

• $33.5 billion for Urbanized Area Formula Grants.
• $18.4 billion for the State of Good Repair Grants Program for upgrading older rail and bus systems in urbanized areas.
• $4.58 billion for public transportation in rural areas.

Rail—Provides $66 billion in total funding for rail programs with more than $50 billion dedicated to Amtrak. Of this, $36 billion is directed towards the northeast corridor, with $16 billion allocated for Amtrak's national network. In addition to the Amtrak funding, the bill provides $5 billion for the existing Consolidated Rail Infrastructure and Safety Improvement (CRISI) program which funds projects that improve the safety, efficiency and reliability of intercity passenger and freight rail. There is also $3 billion set aside for the Railroad Crossing Elimination Program.

Roadway Safety—Provides more than $10 billion in funding for roadway safety. Of this, $5 billion is set aside for a Safe Streets For All program, which funds state and local "vision zero" plans and other improvements to reduce crashes and fatalities, especially for cyclists and pedestrians. Also, the National Highway and Traffic Safety Administration and the Federal Motor Carrier Safety Administration would receive more than $2 billion in new funds. The bill also includes a number of new mandates for NHTSA to develop two new specific safety features—one regarding determining if a driver is impaired through alcohol or drugs, and a second to ensure children are not accidentally left in the back seat. Additionally, vehicles would be required to have forward collision warning, automatic braking, lane departure warning and lane keeping assist systems.

User Fees—Regarding the question of the future of user fees, and the widely understood issues with a gasoline tax providing a substantial portion of federal revenues, the measure would set aside $50 million over five years for a new pilot program to explore the use of a national motor vehicle per-mile user fee to bolster the HTF. The bill also would set aside $75 million over five years to reauthorize and expand a separate program offering grants to states for pilot projects to test road usage fees and other alternative revenue mechanisms.

Aviation—Airports and related infrastructure would receive $25 billion, with $20 billion for airports and $5 billion for air traffic infrastructure. Of the funds directed to airports, three-quarters would be provided via the Airport Improvement Program formula.

Inland Waterways—Provides $2.5 billion for new inland waterway projects and $4 billion for operations and maintenance.

Environmental Infrastructure

Water Infrastructure—Provides significant funding to bolster and make much needed repairs to the nation's water infrastructure, with notable provisions including an influx of $55.4 billion in supplemental emergency appropriations for EPA's state and tribal assistance grants (STAG), including the capitalization grants via the CWSRF and the DWSRF of which the bill provides: $14.7 billion for general water and wastewater projects via EPA's Drinking Water State Revolving Fund (DWSRF) and its Clean Water State Revolving Fund (CWSRF) from fiscal years 2022 to 2026. The bill also contains $15 billion for "lead service line replacement projects and associated activities and $10 billion via EPA to address PFAS and other emerging contaminants in drinking water and wastewater, with all funding to be eligible for loan forgiveness.

Additionally, the bill extends EPA's grant program to support the replacement of lead water lines and increases its annual authorization by $40 million, to $100 million for five years, and authorizes $200 million over five years to address lead contamination in schools via testing and remediation. A new $50 million annual five-year pilot program is also created for states to implement improvements to water systems, with priority given to states with high proportions of underserved communities.

On the wastewater front, the bill authorizes $280 million annually for five years to states to support municipal planning and construction of projects which address combined sewage overflows, with caveat that at least 25% of the state's funding must be allocated to rural or financially disadvantaged communities, with at least 60% of the funding going to rural areas. It is anticipated that additional funding for drinking water and wastewater will come via a potential $3.5 trillion reconciliation measure.

Give its unique hydrological needs, western water infrastructure would receive $8.3 billion over five years via the Bureau of Reclamation for a variety of uses including: $3.2 billion for aging infrastructure, $1.15 billion for water and groundwater storage, $1 billion for water recycling and reuse, $1 billion for rural water projects, and additional funding for dam safety, drought contingency plans, and desalination projects. Additionally, the bill would allow states to use COVID-19 fiscal recovery funds to satisfy nonfederal matching requirements for Bureau of Reclamation water projects.

Additionally, the bill includes modest funding to support state efforts to gain primacy over underground injection wells via the Safe Drinking Water Act. There are six classes of wells, including oil and gas production, mineral extraction, waste disposal and carbon sequestration – North Dakota and Wyoming are the only states with primacy over all classes, 33 states have primacy over all wells except carbon sequestration, eight states regulate just oil and gas wells, and EPA oversees all wells in seven states.

Natural Resources and Other Environmental Infrastructure—EPA's watershed programs would also receive significant funds including: $1 billion for the Great Lakes Restoration Initiative, $238 million for the Chesapeake Bay, $106 million for the Long Island Sound and $53 million for the Gulf of Mexico.

Environmental remediation is also included in the bill with a $21 billion investment to clean up Superfund and brownfield sites, reclaim abandoned mine land and cap orphaned gas wells in addition to focusing on advancing environmental justice. EPA's Superfund would receive $3.5 billion from its trust fund, and nearly $3.5 billion from general revenues for remedial activities. For brownfields in particular, $1.5 billion would be distributed over five years for State and Tribal Assistance Grants for brownfields which allow states to assess, clean up and reuse contaminated properties. The majority of that funding will be provided via competitive grants, while the remainder will be allocated via categorial grants of which all state cost share requirements are waived.

A transportation-related environmental measure included is the authorization of $5 billion over five years for EPA to award grants and rebates to replace school buses with zero-emission buses or buses that the EPA certifies reduces emissions and use alternative fuels. Recipients would include state and local governments, and other stakeholder with applications prioritized to districts serving a high percentage of low-income families.

Agricultural Infrastructure—On the agriculture front the bill includes significant funding for carbon removal, firefighting, forest management resources, tree planting and more. For wildfires the bill includes language amending the Stafford Act to allow pre-disaster mitigation grants to cover wildfire projects, funding a new Community Wildfire Defense Grants program at $500 million over five years, and also authorizing $500 million over five years for each activity — prescribed burns, mechanical tree harvesting and clearing, and developing fuel breaks and control locations.

Energy Infrastructure

The bill covers a number of areas within energy infrastructure. In terms of physical transmission, the most significant provision impacting states is not actually a funding provision. The bill would reduce state authority when it comes to electric transmission infrastructure siting, potentially allowing the Federal Energy Regulatory Commission to overrule a state's decision if the Department of Energy determines the line is part of a National Interstate Electric Transmission Corridor. More specifically on the investment front, the bill would authorize $10 million per year through fiscal 2026, along with as much as $2.5 billion in loans from the Treasury Department, for an Energy Department program to support construction of nonfederal electric transmission lines and other facilities by entering into capacity contracts and offering loans.

One item of note impacting current energy infrastructure is a $6 billion fund to help maintain the country's fleet of existing nuclear reactors, which provide about 19% of our electricity today, all at zero carbon emissions. The bill would also authorize $13 billion over five years for grants to stakeholders to improve resiliency to disruptive events including natural disasters.

On the research side, the bill provides $6 billion relating to batteries, both the provision of materials as well as manufacturing and the eventual recycling of those containing critical minerals. It also provides $6 billion for research into carbon capture and storage as well as $8 billion for hydrogen and its ability to serve as energy source, and just over $3 billion for research into advanced nuclear reactors.

Though not directly related to current energy infrastructure, the bill would authorize $11.3 billion for the Abandoned Mine Land Reclamation Fund for fiscal 2022, which would be available until expended. The funding would be used to provide grants to states and tribes for reclamation projects of mine lands abandoned or left inadequately restored before Aug. 3, 1977.

DOE's Weatherization Assistance Program, which provides funding to states and tribes via formula to aid in the reduction of energy costs for low-income households by increasing the efficiency of their homes, was provided $3.5 billion. Relatedly, the bill creates a revolving loan program within the State Energy Program, funded at $250 million for FY 2022, aimed at conducting energy audits, upgrades, and retrofits. The Low-Income Housing Energy Assistance Program administered by the Department of Health and Human Services would receive $500 million over the course of five years to states and tribal nations to fund home energy assistance programs for households in need.

Broadband Infrastructure

This bill includes significant investments in broadband infrastructure, including funding for deployment, subsidies and digital equity. The package provides $65 billion for broadband projects to close the digital divide, improve internet affordability and improve service to low-income customers, with much of the money directed towards states.

The bill establishes a $42.45 billion grant program for states and territories for the expansion of broadband infrastructure construction, prioritizing rural areas and other eligible entities. The program directs states to prioritize a few different categories: 1) unserved areas (lacking 25/3 mbps); 2) underserved areas (lacking 100/20 mbps), and 3) "anchor institutions," which are flagship community institutions, including but not limited to: schools, health care centers, and libraries. Anchor institutions are sometimes connected to fiber even when fiber service is not commercially available in the community. States are permitted to use the funds for planning and capacity building, with projects required to include a "low-cost broadband option." Projects can also include research and data collection, including mapping and identification of unserved and underserved locations; adoption programs; and things like training for employees of the broadband office of an eligible entity. There is a minimum initial allocation of $100 million.

The bill allocates $14.2 billion for an Affordable Connectivity benefit program, which is an extension of the existing Emergency Broadband Benefit program, but it reduces the monthly benefit from $50 to $30. This program will be administered by the Federal Communications Commission.

The bill also includes the Digital Equity Act, which would establish $2.75 billion grant programs to help states fund digital equity plans and other digital inclusion efforts. The State Digital Equity Capacity Grant Program will provide formula grants to support state plan development, conduct digital inclusion work, planning and capacity building. It also requires states to submit a state digital equity plan. The Digital Equity Competitive Grant Program will provide competitive grants to local governments, tribes, community anchor institutions, educational agencies, etc. Middle mile infrastructure, or infrastructure that does not connect directly to an end-user location, is getting a boost. The bill calls for the establishment of a grant program to support deployments of middle mile infrastructure, with $1 billion set aside for this purpose. Eligible entities include telecommunications companies, technology companies, electric utilities, utility cooperative, etc.

There is additional funding for some current programs, such as $2 billion for programs administered by the U.S. Department of Agriculture, including the ReConnect Program, that provide loans and grants (or a combination of loans and grants) to fund the construction, acquisition or improvement of facilities and equipment that provide broadband service in rural areas. There will also be $2 billion in additional funding to the Tribal Broadband Connectivity Program, which was established by the December COVID-19 relief package and is administered by the National Telecommunications and Information Administration.

The bill also:

- Directs the Government Accountability Office to provide a report to Congress evaluating the Federal Communication's (FCC) process for establishing broadband speed standards.
- Directs the FCC to promulgate rules to facilitate equal access to broadband, prohibiting broadband deployment discrimination based on an area's income, race/ethnicity composition, or other factors. Also directs the FCC to develop model state and local policies to ensure broadband providers do not engage in digital discrimination.
- Adds support of broadband access to the purpose of Appalachian Regional Commission and allows the commission to provide technical assistance and make grants to increase affordable access to broadband in the region, including research, analysis, training, construction, and deployment.
- Requires internet providers to use a uniform label to describe their service offerings and prices.
- Requires the FCC to adopt rules within two years to address "digital redlining," which describes internet providers who decline to build or offer access to broadband service in areas deemed unlikely to be profitable.
- Provides $600 million for private activity bonds (PABs), which allows states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.
- Establishes a telecommunications interagency working group to develop recommendations to address the workforce needs of the telecommunications industry.
- Requires the FCC to establish a deployment locations map, which is an online mapping tool to provide a locations overview of the overall geographic footprint of each broadband infrastructure deployment project funded by the federal government.

Cybersecurity

The bill directs that within two years of enactment, the Federal Highway Administrator shall develop a tool to assist transportation authorities in identifying, detecting, protecting against, responding to, and recovering from cyber incidents using the National Institute of Standards and Technology (NIST) cybersecurity framework.

The bill establishes a cybersecurity risks and threats grant program to be administered through the Department of Homeland Security for states and localities. This grant is very flexible and can be used for vulnerability assessments, adoption of NIST best practices, ensuring continuity of operations, mitigation of cyber workforce gaps, assessment, and mitigation of cybersecurity threats to critical infrastructure. The Secretary of DHS must consult with state, local and tribal personnel with cybersecurity experience including their national associations to inform grant guidance. The total authorized appropriation is $1 billion to be issued as follows: $200 million for FY 2022, $400 million for FY 2023, $300 million for FY 2024, and $100 million for FY 2025. Funds may not be used to pay for a ransomware attack.

Additional cybersecurity provisions provide for annual replenishing funds of $20 million for the Cybersecurity and Infrastructure Security Agency's (CISA) cyber response and recovery fund through September 2028 and establishes funding for a national cybersecurity director.

Disaster Response

The bill creates a two-year Disaster Relief Mobilization Study to determine whether bicycles should be used in disaster preparedness and disaster response plans in local communities.

Under various transportation sections of the bill, states may use portions of the infrastructure funding for disaster resilience and mitigation.

The bill also offers grants to eligible entities including, electric grid operators, electricity storage operators, electricity generators, transmission owners or operators, distribution providers, fuel suppliers and any other relevant entity to secure electric grids from natural disasters and wildfires.

The bill provides $3.5 billion for the Federal Emergency Management Agency's Flood Mitigation Assistance program which provides financial and technical assistance to states, and affected communities to reduce the risks of flood damage via buyouts, elevation, and other mitigating activities. Of additional note to states, the bill provides $1 billion for FEMA's Building Resilient Infrastructure and Communities Program, a pre-disaster mitigation program which supports states and tribes in undertaking disaster and natural hazard mitigation projects

The bill also provides relief for taxpayers affected by disasters or other critical events.

Pay Fors

Though the aim was for the bill to be fully paid for, the fiscal note from the Congressional Budget Office, indicated that the bill failed to pay for about 20% of its total $1.2 trillion cost, about $256 billion. The largest pay-for included in the bill would be a clawback of more than $200 billion in previously appropriated funds for COVID-19 relief. Additionally, the bill makes use of funds reclaimed by the federal government that had previously paid fraudulent UI benefits, as well as funds that had previously been appropriated for federal UI payments in states that chose to end those benefits before September 2021. Other major pay-fors are the use of what is known as dynamic scoring, or the growth in tax revenues resulting from the increased federal investments and a delay the Medicare Part D rebate rule which would save $50 billion.

Important Links

- Bill Text
- Section by Section Summary
- State Funding Estimates from White House