



Monthly Legislative Report – August 2021

August Advocacy Meetings

Congressman Alan Lowenthal (D-CA) – We met over the phone with Congressman Lowenthal's senior staff to discuss the Senate's bipartisan infrastructure bill and key differences from the House passed Infrastructure Investment and Jobs Act. We discussed the timeline in September for House floor consideration of the Senate passed infrastructure bill. We also discussed the outlook for the budget reconciliation process and how it may impact the infrastructure bill process in the House.

Congressman Mike Levin (D-CA) – We have been in contact with Congressman Levin's office to discuss the FY22 appropriations and the timeline for negotiations with the Senate in September. We discussed support for Alternative Fuels Tax Credit, and the timeline for floor consideration of Senate's infrastructure bill in the House.

Congresswoman Linda Sanchez (D-CA) – We met with Congresswoman Sanchez's legislative assistant to discuss the budget framework and reconciliation process in the House, as well as the Senate's infrastructure bill. We discussed the need for additional transit formula funding.

Congressman Pete Aguilar (D-CA) – We met with Congressman Aguilar and his senior staff to discuss FY22 appropriations and the timeline for negotiations with the Senate. We discussed the process for reconciling congressionally directed spending differences between House and Senate spending bills. We also discussed the outlook for enacting the THUD bill before the end of the fiscal year.

Senator Dianne Feinstein (D-CA) – We met with Senator Feinstein's office to discuss the timeline for FY22 THUD appropriations markups in the Senate and the process for submitting input. We also discussed the budget reconciliation process and opportunities for new transit funding.

Congressman Lou Correa (D-CA) – We have been in contact with Congressman Correa and his staff to discuss support for additional funding tied to the COVID-19 pandemic to augment CARES Act relief funding. We also discussed FY22 appropriations and how the House and Senate will reconcile different congressionally directed spending requests.

Congresswoman Young Kim (R-CA) – We met with Congresswoman Kim's senior staff to follow-up on our discussions regarding support for local OCTA projects and the Senate's infrastructure legislation. We also discussed the timeline for FY22 appropriations in the House and the need to support OCTA priorities during conference negotiations with the Senate.

Congresswoman Katie Porter (D-CA) – We met with Congresswoman Porter’s office to discuss the Senate infrastructure package and FY22 appropriations. We discussed the timeline for a vote on the infrastructure bill in the House in September and reiterated the need to support additional transit funding in FY22 appropriations.

Congresswoman Michelle Steel (R-CA) – We have been in contact with Congresswoman Steel’s office to discuss the Senate’s infrastructure bill. We also discussed possible legislation later in the year that would support more expedited project delivery policy.

Senator Alex Padilla (D-CA) – We have been in contact with Senator Padilla’s senior transportation staff to discuss the FY22 appropriations process, the Senate’s infrastructure bill, and the budget reconciliation process. We discussed the timeline for FY22 appropriations in the Senate, and the process for reconciling congressionally directed spending with the House bills.

House Appropriations: Transportation, Housing and Urban Development – We have been in close contact with senior staff in the Majority and Minority to discuss the timeline for FY22 appropriations in September.

House Transportation and Infrastructure Committee – We followed-up with majority and minority staff multiple times this month to discuss the process for the passing infrastructure legislation in the House. We discussed differences between the INVEST Act and the Senate’s bipartisan infrastructure bill, and key elements left out of the Senate bill that could be included in a budget reconciliation bill.

Senate Commerce, Science & Transportation Committee – We followed-up early in the month with professional staff to discuss the process for finalizing the Senate’s infrastructure proposal.

Budget Reconciliation

On August 24th, the House passed a \$3.5 trillion budget framework by a vote of 220-212 after 24 hours of negotiations and debate in the Democratic caucus. The vote on the budget was in jeopardy after a group of 10 moderate House Democrats vowed to oppose the budget without first passing the Senate’s bipartisan infrastructure proposal (H.R. 3684). As part of the compromise to pass the budget, Speaker Pelosi (D-CA) committed to passing the bipartisan infrastructure bill by September 27th.

Passing the budget resolution is just the first step in the budget reconciliation process. The budget resolution includes instructions to the House and Senate Committees to draft the legislative text for new spending under their jurisdiction. The Senate Banking, Housing, and Urban Affairs Committee has been allocated \$332 billion to spend, and the House Financial Services Committee received \$339 billion. The committees will still need to draft the legislative language for this new spending, which could mean that a full budget reconciliation package will not be ready until late September, at the earliest.

The full Senate summary can be found [HERE](#).

The House Budget Committee summary can be found [HERE](#).

A summary of how budget reconciliation process works is [HERE](#).

A tentative schedule for the House Committee markups for budget reconciliation is as follows:

Thursday September 2nd

- Natural Resources (11 a.m., Remote)
- Oversight (11 a.m.)

Thursday, September 9th

- Education and Labor (12 p.m., Remote)
- Science, Space and Technology (Remote)
- Small Business (10 a.m., Hybrid)
- Veterans Affairs (2 p.m.)
- Ways and Means

Friday, September 10th

- Ways and Means
- Agriculture (Hybrid)
- Homeland Security (Remote)

Monday, September 13th

- Ways and Means
- Energy and Commerce (Hybrid)
- Financial Services (10 a.m.)
- Judiciary

Tuesday, September 14th

- Ways and Means
- Transportation and Infrastructure (10 a.m., Hybrid)

If the House passes the legislative text prepared by the committees above, it will be sent to the Senate where negotiations on final text will likely take place at the leadership level in coordination with the White House.

Infrastructure Legislation

This month the House passed a Resolution saying that the House will consider on the floor the Infrastructure Investment and Jobs Act (IIJA) by September 27th. It is still not clear exactly when the bill will be considered on the floor. Advocacy groups like APTA are asking lawmakers to provide at least \$10 billion additional dollars for transit in the budget reconciliation process to meet the \$49 billion originally agreed-upon during the bipartisan Senator negotiations with the White House, including dedicated funding for high-speed rail. House and Senate Democrats may seek to include items during the budget reconciliation process that were left out of the Infrastructure Investment and Jobs Act. The letter to Congress from APTA can be found [here](#).

Below is a comparison of other provisions in Senate's Infrastructure bill (IIJA) and the House's INVEST Act and differences between the two bills:

HIGHWAYS

Highway Trust Fund (HTF) Highway Account:

- \$333 billion in INVEST.
- \$303.5 billion in IIJA.
- The Senate bill sets a lower baseline for highway programs in future authorizations.

General Fund:

- \$65.8 billion in IIJA in one-time, guaranteed funding for highways and multimodal formula and competitive grant funding.
- INVEST does not include an appropriations title.

Projects:

- The House bill includes \$5.66 billion in Member Designated Projects.
- The Senate bill does not include any project-specific funding.

Funding for Cities and Local Governments:

- INVEST increases Surface Transportation Block Grant suballocation to local governments to 60%.
- IIJA maintains the existing 55%.

TAP:

- INVEST increases suballocation to local governments for Transportation Alternatives to 66% from.
- IIJA increases to 59%.

Carbon:

- IIJA suballocates 66% of the new carbon formula program.
- INVEST does not suballocate the carbon formula but provides \$1 billion in a carbon grant program dedicated to local government applicants.

Direct Local Aid:

- INVEST provides \$1 billion directly to high performing cities and MPOs to carry out projects
- IIJA does not include a similar program.

Bridges:

- \$33 billion in INVEST.
- \$40 billion in IIJA.

New Bridge Formula:

- IIJA provides \$27.5 billion in one-time, guaranteed General Fund appropriation for bridges under a new formula, based on the number of bridges in poor condition. This results in a different distribution of funds than the standard distribution of highway funds and benefits some states over others.
- INVEST maintains the existing formula for all apportioned bridge funding.

Off-System Bridges:

- INVEST increases the set-aside to \$1 billion per year.
- IIJA maintains current law at approximately \$750 million per year.

SAFETY

Highway Safety Improvement Program (formula):

- \$18.775 billion in INVEST (including railway crossings).
- \$15.56 billion in IIJA.

Transferability:

- INVEST does not allow safety funds to be transferred if fatalities increase or if the state fails to meet safety targets.
- IJA allows states to transfer up to 50% of safety funds for non-safety purposes per year, regardless of safety outcomes.

Complete Streets:

- Standards:
 - INVEST requires context sensitive streets design for all federally funded projects.
 - IIJA does not address dangerous street design.
- Funding:
 - \$3 billion in INVEST for a complete streets formula program, suballocated at 100%, plus \$1 billion in grants for complete streets networks and active transportation connectors (longer distance bike trails)
 - \$5 billion in IIJA for “safe streets and roads” grants, however, at least 40 percent must be set aside for planning, making less than \$3 billion available for safety projects.
- Labor Protections:
 - IIJA safe streets program does not appear to apply Davis Bacon or Buy America.
 - INVEST applies both of these requirements.
- HSIP Set-Aside:
 - INVEST requires both states and MPOs to spend money in specific high-risk corridors within a state based on bike ped fatality data.
 - IIJA has an investment requirement for bike/ped at the state level but does not require tracking or expenditure in the highest risk areas.

High Risk Rural Roads:

- INVEST changes the formula to provide more certainty about which states trigger the high-risk rural road investment requirement, and ensures more funding per year nationwide for these projects
- IIJA makes no change to HRRR.

CLIMATE

Carbon Programs:

- \$9.34 billion in INVEST, in formula funds and competitive grants.
- \$6.42 billion provided in IIJA.

Resilience Programs:

- \$6.25 billion in INVEST.
- \$7.3 billion in IIJA, including formula funds and competitive grants.

GHG Performance Measures:

- INVEST requires states and MPOs to measure carbon emissions from transportation and ensures accountability for emissions reductions.
- IIJA does not include climate performance measures or accountability over how carbon funds are expended.

Transferability:

- INVEST prohibits transfers out the carbon reduction or CMAQ programs for non-emissions reductions purposes.
- IIJA allows 50% of carbon reduction and CMAQ funds to be transferred for any eligible purpose under the highways program.

Resilience Standards:

- INVEST requires all highways, regardless of funding source, built in flood-prone areas to be resilient to extreme weather and take into consideration expected changes based on climate change.
- IIJA requires projects carried out with resilience funds in a flood plain to notify FHWA but does not require any action based on this identification.

Resilience Planning:

- INVEST requires resilience planning tied to funding.
- IIJA does not require resilience planning but increases federal share for projects identified on resilience plans.

EV Charging:

- Guaranteed Funding: \$4 billion in INVEST.
- \$7.5 billion in IIJA.
- Subject to Appropriations:
 - \$36 billion in INVEST for EV rebates and grants under E&C jurisdiction.
- Eligibility:
 - INVEST funds EV charging and hydrogen fueling only.
 - \$2.5 billion of IIJA funding may be diverted to fossil fuel infrastructure.
- Rest Areas:
 - INVEST allows EV charging in rest areas and park and rides.
 - IIJA maintains the current prohibition on commercial activities in the right of way.

Labor Issues:

- INVEST applies Davis Bacon requirements across existing and new programs, regardless of whether the project is on a federal-aid highway.
- IIJA does not apply Davis Bacon to some off-highway projects for clean air, safety, or ferry facilities, as well as some new pots of funding through supplemental appropriations.
- INVEST requires applicants under certain competitive grant programs (totaling approximately \$15 billion in funds) to certify that any contractor or subcontractor utilized will employ qualified apprentices for at least 15 percent of the project's total construction labor hours and emphasizes employment of historically under-represented populations including women and people of color. IIJA does not include similar provisions.
- INVEST ensures the utilization of electricians who are certified under the Electric Vehicle Infrastructure Training Program (EVITP) for the construction, installation, operation and maintenance of EV charging stations. IIJA directs DOT to issue guidance on appropriate certifications but does not require a specific outcome.

Equity:

- Reconnecting Communities:
 - \$3 billion in INVEST.
 - \$1 billion in IIJA.
- Access and Planning Reforms:
 - INVEST requires states and MPOs to track multimodal access to jobs and services, focuses on equity in planning and project selection, and considers land use, including affordable housing, served by transportation plans.
 - IIJA establishes a pilot program for transportation access.
- Persistent Poverty:
 - INVEST prioritizes areas of persistent poverty in several grant programs and increases the federal share for rural and urban areas of persistent poverty.
 - IIJA prioritizes areas of persistent poverty in RAISE discretionary grants.
- EJ Communities:
 - INVEST increases federal share for clean air projects in environmental justice communities.
 - IIJA does not address EJ for highways programs.

Tolling:

- INVEST comprehensively reforms tolling authority to require additional considerations before converting non-tolled facilities to tolled.
- IIJA does not address tolling changes.

Asset Recycling:

- IIJA provides \$100 million for U.S. DOT to establish an "asset concessions" program, to provide grants and technical assistance to states, local governments, tribes, and other public entities to facilitate the lease or concession of public assets to private entities.
- INVEST does not include any provisions on asset concession or recycling.

TRANSIT

Highway Trust Fund Mass Transit Account:

- \$85.7 billion in INVEST.
- \$69.9 billion in IIJA.
- Bus and Bus Facilities (Sec. 5339):
 - \$11.6 billion in INVEST.
 - \$5.5 billion in IIJA.
 - \$4.1 billion for zero-emission buses in INVEST.
 - \$375 million in IIJA for low and no-emissions with 25 percent set-aside for buses that create emissions. Additional General Fund low-and no emission bus funds in IIJA detailed below.
- State of Good Repair (Sec. 5337):
 - \$24.7 billion in INVEST.
 - \$18.4 billion in IIJA.
- Urbanized Area Formula (Sec. 5307):
 - \$35.7 billion in INVEST.
 - \$33.5 billion in IIJA.
- Rural Area Formula (Sec. 5311):
 - \$4.9 billion in INVEST.
 - \$4.6 billion in IIJA.
- Elderly/Persons with Disabilities Formula (Sec. 5310):
 - \$2.1 billion in INVEST.
 - \$1.9 billion in IIJA.
- Persistent Poverty Communities:
 - INVEST provides \$1.8 billion for urban persistent poverty communities and \$207 million for rural persistent poverty communities.
 - No similar provisions are included in IIJA.
- Transit Deserts:
 - \$1 billion in INVEST.
 - Not included in IIJA.
- All Stations Accessibility Program (ADA):
 - \$1 billion in INVEST.
 - IIJA does not provide Mass Transit Account funds but provides General Funds.
- Ferry Boat Discretionary (Urban Areas):
 - \$279.4 million in INVEST.
 - \$150 million in IIJA.

General Fund Discretionary (Subject to Annual Appropriations Process):

- \$23.2 billion in INVEST.
- \$16.5 billion in IIJA.
- Capital Investment Grants (Sec. 5309):
 - \$21.5 billion in INVEST.
 - \$15.0 billion in IIJA.
- WMATA Grants:
 - \$1.73 billion in INVEST

- \$1.35 billion in IIJA.

General Fund One-Time Guaranteed:

- \$21.25 billion in IIJA
 - State of Good Repair (Sec. 5337): \$4.75 billion
 - Capital Investment Grants: \$8.0 billion
 - Seniors/Disabled Formula: \$250 million
 - Low and No Emission Bus: \$5.25 billion
 - All Stations Accessibility Program: \$1.75 billion
 - Electric or Low-Emitting Ferry Pilot: \$250 million
 - Rural Ferry Program: \$1.0 billion
- No appropriations title in INVEST.

80/20 Split:

- The INVEST Act provides a floor of 20.4 percent of funds for transit, but also ensures eligibility for transit in programs within the highway title, including Projects of National and Regional Significance, Carbon Pollution Reduction, Pre-Disaster Mitigation, Community Transportation Investment Grants and Community Climate Innovation Grants, ensuring transit project can access highway funding.
- The IIJA includes 18.7 percent of revenues for transit.

POLICY

Policy Omissions

- The IIJA omits many of the transit policies included in INVEST, including but not limited to:
 - Formula changes to provide funds to persistent poverty communities.
 - Transit operating assistance (provided in INVEST via a Transit Deserts program, the Carbon Pollution Reduction program, and modifications of the 100 Bus Rule).
 - Buy America reforms to strengthen domestic content requirements for transit rolling stock.
 - Capital Investment Grant reforms to restore the 80 percent federal share to all CIG projects and to streamline transit project delivery.
 - Making the transit-oriented development program permanent and creating the Office of Transit-Supportive Communities.
 - Rural formula changes to distribute funds based on the provision of actual transit service.
 - Increased protections against predatory state-owned enterprises.
 - Reduced fare pilot program to support low-income riders.
 - Formula and discretionary grant changes to incentivize frequent transit service.
 - Creation of a dedicated bus state of good repair program.
 - Creation of a new mobility on demand program.
 - Reforms to the process for reporting ADA violations.
 - Bus procurement streamlining to reduce costs for transit agencies.
 - Transit vehicles battery recycling and reuse provisions.

Polluting Vehicles Set-aside in Low and No Emission Bus Program.

- The INVEST Act converts the Low and No Emission Bus Program to the Zero-Emission Bus program, ensuring that all vehicles purchased under the program are zero-emission.
- The IIJA includes a requirement that no less than 25 percent of funds under the Low and No Emission Bus program go to vehicles that create emissions.

New Transit Capacity.

- The IIJA includes a new provision requiring Capital Investment Grant program applicants to demonstrate progress towards their asset management performance targets but does not place any such strictures on the construction of new highways.

RESEARCH

VMT Pilots:

- IIJA continues the state Vehicle Miles Traveled (VMT) pilot program, funded at \$15 million per year, and authorizes a \$10 million national VMT pilot program with the assistance of an advisory board.
- INVEST funds state VMT pilots at \$35 million per year.

University Transportation Centers (UTCs) funding:

- INVEST funds the UTC program at \$96 million annually.
- IIJA funds UTCs at \$101 million annually by FY26, including \$82 million out of the HTF and \$19 million in supplemental appropriations.

Highway Research and Development Program:

- INVEST provides \$144 million annually.
- \$147 million annually in IIJA.

Highway Technology and Innovation Deployment Program:

- INVEST provides \$152 million annually.
- \$110 million annually in IIJA.

Intelligent Transportation Systems Program:

- INVEST provides \$100 million annually.
- \$110 million annually in IIJA.

PROJECT DELIVERY & ENVIRONMENTAL REVIEW

NEPA Implementation Fund:

- INVEST Act provides \$150 million for federal agencies to implement NEPA to ensure timely completion of the environmental review process. Project sponsors have cited lack of adequate funding as the primary reason for project delays.
- The Senate bill does not include this funding.

Local Project Delivery Reforms:

- INVEST provides flexibility for local governments to carry out certain elements of federal project bidding, review, and design, cutting red tape and allowing more efficient project delivery, particularly for low cost and low impact projects.
- The Senate bill does not include comparable reforms.

Environmental “Streamlining:”

- Senate bill codifies One Federal Decision and reauthorizing FAST-41. It also allows for the adoption of state environmental review documents without safeguards set forth in NEPA.
- The INVEST Act does not include these provisions.

Categorical Exclusions:

- The Senate bill expands categorical exclusions and requires agencies to adopt the categorical exclusions of other federal agencies.
- The INVEST Act maintains the existing process for adoption of categorical exclusions, which allows agencies to adopt categorical exclusions through rulemaking if determined appropriate and reviewed by the Council on Environmental Quality.

RAIL

Grant Program	INVEST	IIJA
Amtrak NEC	\$13.5 billion	\$6 billion
Amtrak National Network	\$18.5 billion	\$16 billion
Passenger Rail Improvement, Modernization and Expansion (PRIME)/Bridges, Stations and Tunnels (BeST)/Federal- State Partnership for Intercity Passenger Rail	PRIME \$30 billion BeST \$25 billion	Fed/State Partnership \$36 billion with a cap of \$24 billion for the NEC.
Consolidated Rail Infrastructure and Safety Improvements (CRISI)	\$7 billion	\$5 billion
Grade Crossing Separation/Elimination	\$2.5 billion	\$3 billion
Interstate Rail Compacts	\$25 million	\$15 million (NN set aside)
Railroad Rehabilitation and Improvement Financing (RRIF) Credit Risk Premium	\$970 million	\$320 million (authorized only)
Restoration & Enhancement	\$100 million	\$250 million (NN set aside)

AMTRAK

Most of the Amtrak provisions in the IIJA tighten the Federal Railroad Administration’s (FRA) control of Amtrak planning and budgeting in the name of increased transparency. This is manifest in the appropriated amounts as well as the authorizing language for

Amtrak as the appropriations section requires the U.S. DOT to submit project lists to Congress for Amtrak spending rather than Amtrak itself submitting the spend plan.

Some of the provisions from the INVEST Act that are not in the Senate bill include:

- Giving Amtrak the ability to go to court to enforce its statutory “right of preference” on freight tracks.
- Changes related to the process governing Amtrak’s requests to operate additional trains over host railroad’s lines.
- Prohibiting Amtrak from forcing mandatory arbitration on passengers.

PASSENGER RAIL

Rail Safety

- Some of the provisions of the INVEST Act that are not in the IIJA include:
 - Recission of special permits and staying of regulations permitting the transport of LNG by rail tank car until such transport is analyzed, studied, and other conditions are met.
 - Mandating a two-person freight train crew size.
 - Prohibiting Mexico-based crews from operating freight trains in the United States.

Comparisons:

- Non-traditional rail safety:
 - INVEST requires review of FRA safety regulations to identify any gaps or challenges to ensuring safety of non-traditional and emerging rail technologies (maglev/hyperloop safety).
 - The IIJA directs the Secretary to issue regulations necessary for high-speed rail services, and requires that before doing so, the Secretary must consult with developers of new high-speed rail technologies to develop a method for evaluating safety performance (and may solicit feedback from safety experts or employee representatives who work with similar technology).
- Train length data:
 - INVEST requires railroads to report on the number of crewmembers and the length of trains involved in accidents/incidents.
 - The IIJA collects similar data but for only five years.
- Long train study:
 - The IIJA’s long train study is similar to the INVEST Act, but it requires the National Academy of Sciences (rather than FRA) to conduct the study and does not require FRA to take action based on the study or share its results (as INVEST does).
- Fatigue:
 - INVEST Act requires the Secretary to issue final regulations on fatigue management plans—a 2008 congressional mandate—and, once

implemented, open a railroad's fatigue management plan if fatigue is a systemic issue for the railroad.

- The IIJA directs FRA to conduct fatigue pilot programs required by the 2008 law that have never commenced.

Grade Crossings:

- The INVEST Act prohibits a stopped freight train from blocking a public highway-rail grade crossing for more than 10 minutes and allows the Secretary to issue civil penalties to railroad carriers for repeated violations of blocked crossings.
- The IIJA sets no time limit but mandates the FRA to create a public blocked crossing portal for no more than three years; this portal already exists today. The information collected is expressly prohibited from being used for enforcement purposes or trend identification. This is actually worse than current law, where no restrictions on the portal data exist.

FRA Announces \$362 million in CRISI Funding

On August 26th, the Federal Railroad Administration (FRA) announced an upcoming Notice of Funding Opportunity (NOFO) for the Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program. This round will make a total of \$362 million available with set-asides for the following purposes:

- *Rural*: Not less than \$93.7 million, or 25%, will be made available for rural projects.
- *Intercity passenger rail development*: Not less than \$75 million will be made available for eligible projects that support the development of new intercity passenger rail service routes, including alignments for existing routes.
- *Capital improvements for trespass prevention*: Not less than \$25 million will be made available for capital projects and engineering solutions targeting rail trespassing.
- *Railroad Trespassing Enforcement*: \$2,034,296 will be made available for grants to fund applicable law enforcement wages to undertake trespass enforcement activities.
- *Railroad Trespassing Suicide Prevention*: \$207,000 will be made available for grants to fund targeted outreach campaigns to reduce the number of railroad-related suicides that involve trespassing.

The full NOFO can be found [HERE](#).

USDOT Leadership Update

The US Department of Transportation continues to operate without many of its key leadership positions filled by a Senate-confirmed nominee. As of this report, only 4 of 11 nominees that will head major agencies within the DOT have received Senate confirmation. Acting officials that are awaiting Senate confirmation do not have the same weight or authority of a Senate-confirmed official. President Biden's four DOT confirmations include Secretary Pete Buttigieg, Deputy Secretary Polly Trottenberg, Under Secretary of Transportation for Policy Carlos Monje, and Federal Transit Administration Administrator Nuria Fernandez.