

HEROES Act: Transit Relief, or Not?

Prepared by Chris Zeilinger, Community Transportation Association of America

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Normally, legislation that aims to steer an additional \$32 billion of pandemic-related funding into the budgets of public transit systems would be seen as a good thing. Sometimes, though, it's not always that clear.

Quickly, and with surprisingly little fanfare, the House of Representatives passed its latest edition of a "HEROES Act" on October 1. Billed as \$2.2 trillion of pandemic relief, to pick up where this spring's CARES Act left off, this legislation includes another round of one-time "stimulus" checks to taxpayers, a restoration of the increased unemployment benefits that had been part of the CARES Act, another round of Payroll Protection Act awards to small businesses, and – unlike the CARES Act – significant financial assistance to schools and to state, tribal and local governments. Oh, and it includes a supplemental appropriation of \$32 billion of pandemic-related funding to the Federal Transit Administration.

Unless something surprising takes place, the Senate will not be taking up this legislation. So, it looks like the main purpose of this bill, aside from scoring some points of partisan action in an election season, is to help keep alive the current high-level negotiations between House Speaker Pelosi and Treasury Secretary Mnuchin over a possible arrangement to provide one more round of pandemic relief. Those negotiations may lead to something like what's in the HEROES Act, but are likely to be significantly different...and that's assuming a compromise can be brokered to the mutual satisfaction of the House, the White House and the Senate.

Let's take a closer look at the transit provisions of this HEROES Act, and see how it offers a mixed bag of blessings for public transportation:

- The Section 5310 program would receive \$250 million. CTAA and other have pointed out the importance of addressing this network, as many Section 5310-funded transit providers were completely ignored in the CARES Act.
- The Section 5311 program would receive \$750 million. Now that states and rural transit systems are having to take a longer-range view of the pandemic's effect on rural transit and rural communities, this additional influx of funds is a welcome supplement to what's been appropriated under the CARES Act.
- It's not a concern for most CTAA members, but the Section 5309 capital investments grant program would get \$2.5 billion under the HEROES Act. In comparison, this program received nothing under the CARES Act.

- FTA would receive \$10 billion for use in discretionary pandemic-related transit relief grants. Nothing like that was in the CARES Act. However, the details of this provision of the HEROES Act all but limits its eligibility to one urbanized area, possibly with a few crumbs of discretionary assistance available for a few other large urbanized areas that happen not to be New York City.
- The Section 5307 program (including formula-based state of good repair grants under Section 5337) would stand to receive \$18.5 billion.

At first glance, the HEROES Act says these funds would be distributed just like the CARES Act, using the standard Section 5307 formula-based approach, but that's not really the case.

- First, it looks like a sort of pandemic relief funding cap would be established for every urban transit system in the country: Section 5307 recipients – regardless of size or whether they're in large or small urbanized areas – could not receive any more relief than the dollar amount of their 2018 operating costs, as reported to the NTD. What's especially challenging about this cap is that it covers the combination of CARES and HEROES Act funding.
- Urban transit systems that received CARES funding allocations equal to or greater than their 2018 operating budgets would get nothing under the HEROES Act.
- For urban transit systems whose CARES allocations were less than their 2018 operating costs, their HEROES allocations would only be for whatever amount of money bridges that gap between CARES funding and the funding caps.
- A few urban transit systems whose FTA formula funding is significantly less than their 2018 operating costs probably would get the most benefit of this HEROES Act assistance.

In an interesting exercise, the Eno Center for Transportation took a dive into this HEROES Act language, looking to see how the NTD-based funding cap would influence the distribution of funds (if you're a subscriber to their "Eno Transportation Weekly" newsletter, you can read their analysis at <https://www.enotrans.org/article/transportation-funding-in-the-new-house-covid-bill/>).

Let's just say that, although the Section 5307 funding formula may be the underlying basis for calculating HEROES Act urban transit apportionments, the actual distributions would bear no resemblance to your typical Section 5307 apportionments:

- Few, if any, transit systems in urbanized areas with populations less than 200,000 would receive a dime under the HEROES Act.
- For transit systems in the 138 urbanized areas with populations between 200,000 and 1 million, HEROES Act dollars would find their way into the budgets of an

estimated 96 urbanized areas' transit systems, but many of these allocations would be pretty small.

- Among transit systems in the 42 urbanized areas with populations above 1 million, some HEROES Act urban transit funding would land everywhere except Providence, R.I. In most cases, the funding cap would limit how much these large urban areas' transit systems could expect under the HEROES Act mechanism. There are, however, 20 urbanized areas whose transit systems would not be affected by the HEROES Act funding caps.

Based on Eno's analysis, the urban transit "winners" under the HEROES Act would be Section 5307 recipients in these urbanized areas:

New York City – Newark	San Antonio
Los Angeles – Long Beach	Pittsburgh
Houston	San Jose
Washington DC-MD-VA	Cincinnati
San Francisco – Oakland	Kansas City
Seattle	Milwaukee
Minneapolis – St. Paul	Columbus OH
Denver – Aurora	Austin
Portland OR-WA	Charlotte
Cleveland	Jacksonville

Transit systems in every other urbanized area around the U.S. basically would get little to no benefit under the HEROES Act.

What Happens Next with the HEROES Act?

If this were "normal" legislation, the next step would be to wait and see if the Senate takes up this bill or drafts its own comparable legislation. But this is not following a normal process, and the Senate has no plans to take up the bill.

If Speaker Pelosi and the White House reach some agreement over a new round of pandemic-related funding and relief, some version of the above-described transit spending may – or may not – be part of the agreement. In that case, the agreement negotiated with the White House essentially would come before the House, and then the Senate, to be voted up or down, with no real opportunity for amendment (in other words, if you want to contact members of Congress about how this legislation would affect transit services in your community, all they can really do is convey those concerns to the Speaker and her team).

The future of these pandemic relief talks remains uncertain, so it's entirely possible that the whole concept of the HEROES Act vanishes with the end of this Congressional session in December 2020.