A Look at the INVEST in America Act and Its Treatment of Transit

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On June 3, Congressman Peter DeFazio (D-Ore.), chair of the House of Representatives' Transportation and Infrastructure Committee, released the majority leadership's initial draft legislation to reauthorize federal highway, transit, and other surface transportation programs through 2025. Known as the "INVEST in America Act," this is an ambitious, generous piece of legislation that speaks to many of the priorities that have been raised by CTAA and our partners in public transportation.

Before we dig into this bill's details, let's remember that everything in this bill is just a first draft, and many things may happen along the way to reauthorizing the FAST Act. And it's entirely possible that nothing gets finalized in this session of Congress, placing the whole reauthorization process on hold until the 117th Congress convenes in early 2021.

Assuming the INVEST in America Act proceeds in an orderly fashion, it first is subject to amendment, or "markup," within the House Transportation and Infrastructure Committee, before proceeding to a full vote in the House of Representatives. Meanwhile, counterpart – but far from identical – legislation is moving through the Senate, in which the Banking, Housing and Urban Affairs Committee first must draft its version of transit legislation (they're working on this), and see that draft fused with the other bits of surface transportation legislation working through the Senate's Environment and Public Works Committee and the Senate's Commerce, Science and Transportation Committee. Oh, and there's a super-critical financing piece in both the House and Senate – that important question of how to support the Highway Trust Fund and pay for these transit and highway programs – that must pass through the House Ways and Means Committee and the Senate Finance Committee. So, as you can see, this bill, with all its potential strengths, has miles to go before becoming law.

If you want summary information, section-by-section details, or even the full 864-page draft bill, those things can be found at https://transportation.house.gov. If you like – or don't like – what you see, contact your representatives in Congress, and let them know your views; it's important that they hear from their constituents.

Below is how the INVEST in America Act stacks up against the legislative priorities CTAA has been advancing on behalf of our members and their partners. In case you need a reminder of these priorities, take a look at https://ctaa.org/wp-content/uploads/2020/01/2020_Legislative_Priorities.pdf.

CTAA Priority: Increased funding under FTA's formula grants for urban, rural, tribal and specialized transit. In FY 2020, spending from the Highway Trust Fund's Mass Transit Account is $10.2 billion, with a healthy "plus-up" in general revenues that further boosted formula grants. The INVEST in America Act would maintain these levels in FY 2021, then bump up trust fund spending to $16.2 billion in FY 2022, with incremental increases to $17.0 billion in FY 2025.

- The Section 5310 program (authorized at $285.6 million in FY 2020) would jump to $434.8 million in FY 2022, and keep growing to $455.7 million in FY 2025.
- The Section 5311 authorization ($673.3 million in FY 2020) jumps to $1.0 billion in FY 2022, and increases to $1.1 billion in FY 2025. Additional Section 5311 funds would continue to be derived from Section 5340, as currently is the case.
- Within Section 5311, formula grants for tribal transit (currently $30.0 million per year) would jump to $45.7 million in FY 2022, growing steadily to $47.9 million in FY 2025.
- The annual set-aside of $20.0 million within Section 5311 for public transit in Appalachia would be terminated, but there'd be a new program of supplemental rural transit funding to areas of persistent poverty, starting at $20.0 million in FY 2021, and growing to $21.3 million in FY 2025.
- Section 5307 urban transit formula grants (authorized at $4.9 billion in FY 2020), would jump to $7.5 billion in FY 2022, increasing to $7.9 billion in FY 2025. Section 5307 apportionments would continue to be supplemented by the urban share of Section 5340 authorizations.

CTAA Priority: Address the Highway Trust Fund shortfall. This is an issue for the House Ways and Means Committee, and isn't yet included in the INVEST in America Act.

CTAA Priority: Maintain existing support for federal tax incentives for transit. Issues such as the qualified transportation fringe benefit for transit users, and matters of federal motor fuel tax collections and exemptions fall under the House Ways and Means Committee's jurisdiction, and aren't yet included in the INVEST in America Act.

CTAA Priority: Make permanent the Section 5311 and 5310 programmatic deferrals from FTA's public transportation safety requirements. The INVEST in America Act is silent on this issue.

CTAA Priority: Ensure more local match flexibility for Section 5311 and 5310 programs. The INVEST in America Act would maintain all current categories of eligible sources for the non-federal share of Section 5307, 5310 and 5311 programs.

CTAA Priority: Incentivize volunteer driver programs. While the INVEST in America Act doesn't touch the tax treatment of volunteer services (that's yet another matter under the House Ways and Means Committee's jurisdiction), it would add a mechanism under which volunteer hours could be counted toward the non-federal share of Section 5311 projects.

CTAA Priority: Address end-of-life values and disposition of transit assets. The INVEST in America Act would add a provision, applicable to Section 5307, 5310 and 5311 recipients, under which capital assets that have reached the end of their useful life, but are still worth more than $5,000, can be sold off at their current market value, with the transit agency and FTA sharing the proceeds of that sale. This may not sound like the perfect deal, but it's better for transit agencies than current federal regulations' requirement that 100 percent of all such sale proceeds must go to the US Treasury, even if there's no remaining federal financial interest in the asset.

CTAA Priority: Remove the 55 percent limit on the amount of Section 5310 funding available for capital purchases. The INVEST in America Act is silent on this topic.

CTAA Priority: Increase the Small Transit Intensive Communities (STIC) set-aside within Section 5307. In addition to increasing overall funding for Section 5307, the INVEST in America Act would allocate 3.0 percent of small-urban Section 5307 funding on the basis of these STIC factors, which is more than the 2.0 percent of funds currently set aside for STIC.

CTAA Priority: Increase funding for buses and bus facilities under Section 5339. In FY 2020, the Section 5339 authorization is $808.7 million, to which Congress has added supplemental appropriations from general revenues. The INVEST in America Act boosts Section 5339 funding to $2.1 billion in FY 2022, which would increase steadily to $2.2 billion in FY 2025.

- Over that period, formula-based Section 5339(a) grants (authorized at $464.6 million in FY 2020) jump to $1.2 billion in FY 2022, growing to $1.3 billion in FY 2025;
- Section 5339(b) competitive grants (authorized at $344.0 million in FY 2020) jump to $437.1 million in FY 2022, but would decrease every year thereafter, winding down to $351.1 million in FY 2025.
- The Section 5339(c) program, which currently carves out $55.0 million from Section 5339(b) for low- and no-emission buses and bus facilities, becomes a separate line-item within Section 5339, starting at $375.0 million in FY 2022, and growing to $500.0 million in FY 2025; note, though, that this program would focus solely on zero-emission vehicles under the INVEST in America Act.
- Bus replacement no longer would be eligible for competitive Section 5339(b) grants; instead, there'd be a 15 percent carve-out within the Section 5339(a) formula program prescriptively targeted to bus replacement.

CTAA Priority: Ensure CNG, propane and other clean fuel buses are eligible for Low- and No-Emission bus grants. The INVEST in America Act actually would take the opposite approach, expanding Section 5339(c) funding, but restricting its scope solely to zero-emission buses.

CTAA Priority: Clarify when charter service restrictions are not to apply in rural public transit. The INVEST in America Act would clarify that the charter service restriction applies only within urbanized areas, does not apply to transit agencies whose only FTA funding is received under Section 5310, and is not triggered by a transit agency's receipt of social services funding that's being used as the non-federal share of Section 5307- or 5311-funded projects.

CTAA Priority: Streamline bus procurement regulations. The INVEST in America Act would make some initial modifications to FTA's Buy America and Pre-Award/Post-Delivery Audit requirements, and would call for bus procurements to be conducted using open-market, performance-based specifications, around which there'd be a negotiated rulemaking aimed at establishing a list of specific components deemed eligible for inclusion in bus procurements. Further, it would require FTA to conduct rolling stock Buy America certifications to remove the burden from transit agencies. This will enable rolling stock to be certified once, rather than every single contract, with the objective of removing variation in Buy America compliance.

CTAA Priority: Apply risk-based analysis to FTA programmatic oversight. The INVEST in America Act appears to be silent on this topic.

CTAA Priority: Ensure common sense DBE regulations. The INVEST in America Act addresses the DOT's DBE program, aiming to align this program to its continuing priorities. Whether these are "common sense" reforms would depend on how DOT carries this out.

CTAA Priority: Open up the Section 5309 "Small Starts" program to better facilitate small-urban and rural BRT projects. The INVEST in America Act would make a number of changes to the Section 5309 program, including increasing the ceiling under which fixed-guideway projects could qualify as "Small Starts," but does not appear to make this program any more accessible to rural and small-urban transit projects.

CTAA Priority: Assure accessible and safe implementation of autonomous vehicle strategies. While the INVEST in America Act has a number of provisions addressing autonomous vehicles, and a number of provisions to accelerate the use of new technologies in public transit, the only item specific to the use of autonomous vehicles by public transit agencies is a restriction on these deployments unless the transit agency has a DOT-approved workforce development program looking at affected jobs and resulting job retraining needs.

CTAA Priority: Assure continued provision of technical assistance around transit technology. All of FTA's current technical assistance activities, including the National Center for Applied Transit Technology (https://n-catt.org) would continue to be eligible under the INVEST in America Act. There would be some statutory modification to the transit frontline workforce program at Section 5314(b)(2), but no other apparent changes to existing technical assistance centers or programs. Various aspects of technology in transit would get new features under the INVEST in America Act, including, among other items:

- Provisions under a new Section 5316 "mobility innovation" heading that would ease the ability of FTA recipients to use some of their Section 5307, 5310 or 5311 funds for Mobility as a Service or Mobility on Demand activities;
- Authorization at Section 5312(d)(3) (with no specific funding) for FTA to establish a "Mobility Innovation Sandbox Program"; and
- An expanded authorization, at Section 5310(k), for "Innovative Coordinated Access and Mobility" grants, starting at $20.3 million in FY 2022, and growing to $21.3 million in FY 2025.

But Wait, There's More!

The INVEST in America Act contains many other features that weren't part of CTAA's published priorities, but will be interesting, should they become signed into law. Here are just a few of those possibly notable items:

- Commercial Drivers Licenses would be required for drivers of vehicles designed to transport 8 or more passengers when the individual or entity operating such a vehicle receives compensation (in contrast, the current threshold for CDL applicability is 16 passengers).
- There would be opportunities under which some CMAQ-funded transit operations could continue using those funds with no time limitation, instead of the firm 3-year time limit under current law. In comparison, the Senate Environment and Public Works Committee's highway reauthorization would completely eliminate time limits when CMAQ funds support transit operations.
- There are provisions that would continue FTA's administrative activities, even during lapses of authorizations or appropriations.
- A new tier would be added to the "100-bus rule" under which transit systems in larger urbanized areas can use some of their Section 5307 funds toward operating costs. Under the INVEST in America Act, large-urban transit systems with between 101 and 125 vehicles operated in maximum service would be able to use up to 25 percent of their Section 5307 funds toward operating costs.
- FTA would be required to apportion state-managed formula funds under Sections 5307, 5310 and 5311 no later than December 15 each year.

The INVEST in America Act also addresses some aspects related to the COVID-19 pandemic, including these items:

- Formula funding determinations in FY 2022 would be based on transit data for the 2019 reporting year, thus avoiding impacts from many transit systems' dramatically reduced operations during the pandemic.
- There would be a supplemental authorization for FY 2021, modeled after the CARES Act, in which $5.8 billion would be distributed on a formula basis to recipients of Section 5307, 5310 and 5311 funding. Inclusion of Section 5310 is something we did not see with the CARES Act. Unlike the CARES Act, these particular funds would carry the same time limits as "regular" apportionments of Section 5307, 5310 and

5311 funding. There also would be a $958 million supplemental appropriation to Section 5309. All these funds could be used to cover 100 percent of eligible costs.
- In addition, almost ALL formula grants under Sections 5307, 5310, 5311, 5337 and 5340 in FY 2021 would carry a 100 percent federal share.

As mentioned earlier, there's a lot more in the INVEST in America Act's 864 pages that you may find interesting, not just in the transit title, but also in its highway reauthorizations, its transportation research title, and elsewhere. But before we allow ourselves to become too absorbed in these details, let's keep an eye on where this bill moves, and what the Senate does for transit reauthorization on its side of Capitol Hill.