Senate Infrastructure Plan and Community Transportation

Prepared by Chris Zeilinger, Community Transportation Association of America

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Launching what may be the home stretch of Congressional negotiations around surface transportation and other infrastructure legislation, the Senate started off the month of August by debating its just-released bipartisan infrastructure plan. While the headline-grabbing features of this plan, officially introduced by Senators Kyrsten Sinema (D-Ariz.), Rob Portman (R-Ohio) and eight other co-sponsors, include its bottom-line funding of $1.2 trillion over eight years, of which $39 billion is for public transit programs, the transit details certainly warrant some attention.

In contrast to the "INVEST In America Act" passed earlier this summer in the House of Representatives, the Senate plan – at least as introduced – makes hardly any structural change to the core programs of the Federal Transit Administration. Very few new programs are created, there are almost no changes to any of the formulas used to allocate the majority of FTA funds, and there are very, very few changes in statutory policies or processes. Oh, and in another contrast to the House-passed legislation, there are no "earmarks" or "member-designated" transit projects in the Senate's proposed legislation.

Basically, the Senate plan's attention to transit takes the form of a five-year reauthorization of federal surface transportation programs, starting with fiscal year 2022, and continuing through fiscal year 2026. Other sections of the Senate's infrastructure plan, currently entitled the "Infrastructure Investment and Jobs Act," aim to make more sweeping, transformative investment and changes in areas of physical infrastructure, but the transit elements are kept quite simple, for the most part.

Increased overall growth in federal transit spending

The largest portion of FTA spending has been, and would continue to be, funds derived from the Mass Transit Account of the federal Highway Trust Fund, most of which would continue to be distributed in formula-based grants to urban areas and to states. Current spending from the Mass Transit Account is $10.2 billion a year, with a healthy "plus-up" in general revenues that have further boosted formula grants. The Senate plan would bump up trust fund spending to $13.4 billion in Fiscal Year 2022, and this funding would increase steadily to $14.6 billion in FY 2026.

In addition to those funds from the Highway Trust Fund's Mass Transit Account, the Senate plan institutionalizes another $6.25 billion per year in specific general fund supplements to the public transit program.

Below are some funding elements in the Senate plan likely to be of greatest interest to most CTAA members and their partners.

- The Section 5310 program (currently authorized at $285.6 million) would jump to $371.2 million in FY 2022, and keep growing to $407.0 million in FY 2026. This program would be supplemented with an additional $50.0 million a year in general funds. The Senate plan makes no structural, formulaic or programmatic changes to Section 5310.

- The Section 5311 authorization (currently $673.3 million) grows to $875.3 million in FY 2022, increasing steadily to $959.6 million in FY 2026. Additional Section 5311 funds would continue to be derived from Section 5340, as currently is the case. Aside from increasing the share of Section 5311 funds directed to tribal nations and Appalachia (see below), the Senate plan makes no structural, formulaic or programmatic changes to Section 5311. For instance, there would not be a persistent poverty set-aside in the proposed Senate treatment of Section 5311 funds.

- Within Section 5311, formula grants for tribal transit, which have been fixed at $30.0 million per year in current authorizations, would be set at 5.0 percent of Section 5311 funding; this would be approximately $43.8 million in FY 2022, growing to $48.0 million in FY 2026.

- The Appalachian rural transit set aside within Section 5311, currently fixed at $20.0 million per year, would instead be set at 3.0 percent of Section 5311 appropriations; this would be approximately $26.3 million in FY 2022, growing to $28.8 million in FY 2026.

- Section 5307 urban transit formula grants (currently authorized at $4.9 billion), would be $6.4 billion in FY 2022, increasing to $7.0 billion in FY 2026. Section 5307 apportionments would continue to be supplemented by the urban share of Section 5340 authorizations. Aside from increasing the share of small-urban Section 5307 funds allocated through STIC (see below), the Senate plan makes no structural, formulaic or programmatic changes to Section 5307.

- In addition to increasing overall funding for Section 5307, the Senate plan would allocate 3.0 percent of Section 5307 funding on the basis of small transit-intensive communities' (STIC) performance factors, which is more than the 2.0 percent of funds currently set aside for STIC.

- Section 5339 bus and bus facilities grants, currently authorized at $808.7 million (not including generous supplemental appropriations from general revenues), would be $1.1 billion in FY 2022, increasing steadily to $1.2 billion in FY 2026.

- Over that period, formula-based Section 5339(a) grants (currently authorized at $464.6 million) grow to $604.0 million in FY 2022, increasing to $662.2 million in FY 2026; the "national distribution" of Section 5339(a), currently fixed at $90.5 million per year, would be set at $206.0 million per year, of which $4.0 million would be allocated to each state and $1.0 million would be allocated to each non-state US possession.

- Section 5339(b) competitive grants (currently authorized at $344.0 million) jump to $375.7 million in FY 2022, and would increase to $411.9 million in FY 2026. At least 15 percent of Section 5339(b) projects would have to be for rural transit, up from the 10 percent rural requirement under current law.

- The Section 5339(c) low- and no-emission bus program, currently funded at $55.0 million, jumps to $71.6 million in FY 2022, growing to $78.5 million in FY 2026; the Senate plan would add a new requirement that at least 25 percent of Section 5339(c) grants be made for vehicles that are not zero-emission buses. **A major item to note in Section 5339(c) is that the Senate plan would supplement these Mass Transit Account funds with $1.05 billion a year in general funds for low- and no-emission buses and bus facilities.**

- Section 5340, which is a conduit through which additional funds are apportioned to states and urbanized areas on the basis of future population forecasts (the so-called "growing states" apportionments under Section 5340(c)) and to urbanized areas in a limited number of states with high population densities (the "high density" apportionments under Section 5340(d)), jumps from its current level of $570.0 million to $741.0 million in FY 2022, increasing to $812.5 million in FY 2026. Under the Senate plan, 53 percent of these funds would continue to be allocated to every state and urbanized area under Section 5340(c), and 47 percent would continue to be allocated to qualifying high-density states' urbanized areas under Section 5340(d), just as is the case under current law.

Regulatory and Programmatic Amendments

While the Senate's plan doesn't make sweeping changes in transit programs of greatest interest or concern to community transportation providers and their partners, there are a few points that warrant attention. These include the following:

- A provision in the CMAQ authorization that eliminates the time limit on using CMAQ dollars for supporting transit operating expenses in certain circumstances;

- A provision to better allow FTA recipients to retain more than $5,000 from the sale proceeds from the disposition of transit assets at the end of their useful life;

- Increased ability to use certain FHWA-derived funds for bus rapid transit-related projects;

- A new multimodal "Congestion Relief Program," in which transit and other modalities are to play central roles;

- A new "Active Transportation Infrastructure Investment Program," which is to feature connectivity with and inclusion of transit services; and

- A new program of DOT-administered "Strengthening Mobility and Revolutionizing Transportation" (SMART) grants.

What happens next?

The Senate's bipartisan infrastructure plan arrived on the Senate floor at the beginning of August, and promptly entered a week or more of debate. Amendments are possible. At some point, it's likely this plan, or a somewhat amended version of this plan, will pass the Senate. At that time, there will then be dialogue between House and Senate leadership aimed at reaching bicameral agreement on the legislation, which could well be reflected in further changes to what's been introduced in the Senate. Assuming some agreed-upon legislation leaves Congress, it's likely to be signed into law this autumn, possibly (if optimistically) before the current FAST Act extension expires on September 30.

Exciting times are ahead as this transit vehicle rolls through the halls of Congress.