Infrastructure Plan Becomes Law

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In case you missed it, President Biden signed the "Infrastructure Investment and Jobs Act" (IIJA) into law earlier this month. At its core, this legislation reauthorizes federal surface transportation programs (transit, highways, rail, transportation planning, transportation safety and transportation research) through 2026.

The measure signed into law on November 15, 2021, was exactly what the Senate had passed in early August. On November 5, after a series of delays, the House of Representatives took up the Senate language and passed it almost immediately, without any amendments at all. For a bill whose text runs on for more than a thousand pages, and whose spending amounts to more than a trillion dollars, this is rather unusual, but it sometimes seems that the unusual has become commonplace on Capitol Hill in recent years.

While important to CTAA's members and their partners in public transportation, the five-year $91 billion transit authorization is only one small part of this $1.2 trillion measure. To illustrate the overall magnitude of this infrastructure bill, here are the largest elements of NEW spending (i.e., not simply continuations of existing programs) in FY 2022 alone, according to Congressional Budget Office estimates:

- Federal highway programs - $11.1 billion in new program authorizations for FY 2022, plus $9.5 billion in supplemental appropriations for FY 2022
- Broadband and related telecommunications grants - $46.0 billion in supplemental appropriations for FY 2022, plus another $14.2 billion in FY 2022 supplemental spending on broadband access for low-income households
- Water resources, inland waterways, storm/flood damage mitigation, aquatic ecosystems restoration, navigation projects, etc. - $15.0 billion in supplemental appropriations for FY 2022
- Energy efficiency and renewable energy programs - $18.2 billion in supplemental appropriations for FY 2022
- Abandoned mine reclamation projects - $11.2 billion in supplemental appropriations for FY 2022
- Additional capital to EPA revolving loan programs, Superfund assistance and EPA grants to state, tribal and local governments - $14.1 billion in supplemental appropriations for FY 2022
- Grants to Amtrak and for other intercity passenger rail and freight improvements - $13.2 billion in supplemental appropriations for FY 2022

If you were wondering what happened to the anticipated return of Congressionally designated projects, or "earmarks," especially if you were involved in the preparation of the detailed justifications to support these earmark requests, don't hold your breath. This bill does not contain any of those projects. Instead, it further concentrates transportation decision-making into record-breaking amounts of formula-based funds across all forms of infrastructure (including transit and highway programs), and establishes record-setting amounts of funds available for competitive grants to be decided by federal government agencies.

For example, here are just a few of the largest NEW competitive grant programs that will be administered by the US Department of Transportation:

- National Infrastructure Project Assistance Discretionary Grants - $1.0 billion per year
- Safe Streets and Roads for All Discretionary Grants - $1.0 billion per year
- Strengthening Mobility and Revolutionizing Transportation Discretionary Grants - $100.0 million per year
- Discretionary "PROTECT" resiliency grants - $250.0 million per year (in addition to more than $1.4 billion a year in formula-based PROTECT grants)
- Zero-emission vehicle charging & fueling infrastructure discretionary grants - $300.0 million per year
- Rural Surface Transportation Discretionary Grants - $300.0 million per year

Nearly all of the above programs, plus others, will not be administered by FTA, FHWA or any other modal administration within the DOT. Instead, look for these projects to be solicited, selected, and administered directly out of the Secretary of Transportation's office.

While the IIJA makes numerous large and small adjustments to federal highway, planning and rail programs, the primary change to the federal transit program significantly increased federal spending, with few structural or policy changes from the FAST Act. Below are a few highlights of note.

Increased overall growth in federal transit spending

In general, all Federal Transit Administration (FTA) formula grant programs will jump 30 percent from FY 2021 to FY 2022, and will continue growing through FY 2026. Of course, that means that the non-federal "local match" funding required to leverage these dollars also will need to grow 30 percent, or else states and transit agencies might be leaving some of their transit money on the federal table, untouched.

As a reminder, 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 (FY '21) 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. Under the IIJA, trust fund spending jumps to $13.4 billion in Fiscal Year 2022, and this funding increases steadily to $14.6 billion in FY 2026.

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

Below are some funding elements in the IIJA likely to be of greatest interest to most community transportation providers 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 legislation 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 legislation 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. (Note that a separate, high-profile piece of legislation, colloquially known as the "Build Back Better" bill, does – so far – include a proposed $10 billion transit/housing antipoverty program).

    - 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 legislation makes no structural, formulaic or programmatic changes to Section 5307.

    - In addition to increasing overall funding for Section 5307, the bill would allocate 3.0 percent of small-urban 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 bill adds a new requirement that at least 25 percent of Section 5339(c) grants be made for vehicles that are not zero-emission buses (for example, CNG or propane). A major item to note in Section 5339(c) is that the legislation supplements 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 legislation, 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 IIJA 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," funded at $50 million per year, in which transit and other modalities are to play central roles;

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

There are many other features outside the transit authorization that have the potential of being interesting to public transit providers and their partners. The items listed above are especially worth watching in the coming months and years, but there could be other interesting and positive surprises or opportunities, as well.

What happens next?

The dramatic funding increases and federal support for public transit in the IIJA is exciting news, but states and transit agencies shouldn't be racing to their banks quite yet. These funds, although authorized, don't begin to become available until annual appropriations are signed into law. The 2022 federal fiscal year began more than a month ago, on October 1, but federal appropriations haven't yet been made. Currently, almost all federal spending is creeping along under a continuing resolution set to expire on December 3, 2021. By the time you're reading these words, it's possible that a regular appropriation will have been enacted and the IIJA's funding increases are ready to flow your way, but it's just as possible that yet another "CR" has been enacted as a stopgap measure while the majority and minority parties in the House and Senate continue to work through their priorities and differences.

Separately, there's that matter of the aforementioned "Build Back Better Act," a multi trillion-dollar federal budget reconciliation measure that's been dominating the political and popular news media coverage of Capitol Hill activity for months, while the House and Senate Democrats and Republicans continue to hash out their differences. The House passed its version of this measure on November 19. Senate consideration is likely to be happening very soon. Unlike the Infrastructure Investment and Jobs Act, the House and Senate probably will end up passing different versions of the budget reconciliation bill, so it's bit soon to predict what will or won't become law under that legislation. With that uncertainty in mind, it's worth noting that the House-passed version of this reconciliation bill would, among many, many other things:

- add non-emergency medical transportation (NEMT) as a benefit to low-income persons' health insurance under the Affordable Care Act's "silver" plan of mandatory insurance benefits,
- establish a $10 billion "Housing Investment Fund" that would, in part, incentivize the development of affordable housing in proximity to public transit,
- create a one-time $4.5 billion "Unlocking Possibilities Program" of HUD-administered planning and implementation grants to improve transit-related housing and urban development activities, and
- establish a one-time, $10 billion FTA-administered "Affordable Housing Access Program" of discretionary grants aimed at helping communities address a wide array of potential strategies for improving housing and community development outcomes through transit improvement and innovation.

Will any of the above, or other items of transit interest, become law under the Build Back Better reconciliation bill? You'll just have to stay tuned for further updates.