

## Reauthorization: House T&I Committee INVEST in America Act of 2021 Released on June 4 and Scheduled for Markup on June 9, 2021

On June 4, 2021, the U.S. House of Representatives Transportation and Infrastructure (T&I) Committee released its “Investing in a New Vision for the Environment and Surface Transportation in America Act”, or the “INVEST in America Act of 2021”, for the reauthorization of the federal surface transportation program. INVEST is a \$547 billion bill to fund surface transportation programs which is aligned with the Biden Administration’s American Jobs Plan infrastructure proposal. The bill is similar to the Moving America Forward (HR-2) bill advanced by T&I last year and has drawn criticism from House Republicans on the level of engagement during the bill’s development, unlike the bipartisan Senate Environment and Public Works (EPW) Committee process that resulted in a unanimous committee vote on May 22, 2021.

The INVEST in America bill increases spending by about 11 percent. It is difficult to compare the House INVEST bill with the Senate bill since the EPW bill only addresses highways, while the T&I bill also includes transit and rail titles. The House INVEST bill has a \$343 billion highway program, compared to the Senate EPW \$311 billion program for roads and bridges over the next five years.

The INVEST bill increases federal spending on less-polluting transportation modes, supports a shift to electric vehicles, and ensures road safety for cyclists and pedestrians. The INVEST bill encourages road repair and maintenance, as well as transit expansion. The bill seeks to reduce carbon emissions from the transportation sector and aims to use transportation to support improved access to opportunity for low-income and underserved communities. The INVEST bill dedicates \$32 billion to bridge funding, \$4 billion to electric vehicle charging infrastructure, and \$3 billion for removing or retrofitting highways that divide communities. The T&I Committee also included earmarks in which each member was able to designate \$15-\$20 million for projects of their choice if they conform to T&I requirements.

The House Republicans have put forward their own \$400 billion surface transportation proposal, which does not include money for electric vehicles and allocates far less to environmental programs. The Republican proposal does commit to more regulatory and project approval streamlining.

### **Tolling Provisions in the INVEST in America Act** (Section 1101 – pp.122-139)

The INVEST bill’s Tolling section includes much of the same language that was proposed in last year’s HR-2 bill, except for the interoperability language. The INVEST bill requires a **tolling agreement** with USDOT to introduce tolls in a federally funded project, subject to burdensome operating and reporting requirements. The tolling agreement is also considered a Major Federal Action, triggering a NEPA requirement. IBTTA views the reintroduction of tolling agreements as a major step backward from the progress made in prior reauthorizations, adding another hurdle to state and local initiatives to generate revenue for transportation projects and operations through user payments.

- The tolling agreement requirement applies to: *“conversion, with or without Federal participation, of a non-tolled lane on the National Highway System to a toll facility”*.
- Tolling agreement conditions include a requirement for free passage for public transportation vehicles and over-the-road buses that are available to the public.
- Tolling agreement must consider impacts, which include:
  - *“Congestion impacts on both the toll facility and in the corridor or cordon (including adjacent toll-free facilities).”* Adjacency is not defined, making the requirement unclear.

- “Planned investments to improve public transportation or other non-tolled alternatives in the corridor.” No clarity on the geographic extent of the “corridor” to be considered.
- Other impacts to be considered include: air quality non-attainment or maintenance areas; environmental justice and equity; freight movement; and economic impacts on businesses.

The INVEST bill contains language on **electronic tolling interoperability**, in which tolling agreements require: *“the facility shall provide for the regional interoperability of electronic toll collection, including through technologies or business practices.”* This requirement appears to be well aligned with the outcomes of IBTTA’s National Interoperability (NIOP) outcomes and current regional planning and activities on tolling interoperability hubs.

- INVEST also addresses open exchange of information among toll operators that matches the language that some IBTTA members have endorsed to address issues being confronted in class action suits and with the California state legislature. The bill states: *“PROHIBITION ON RESTRICTION.—No State, or any political subdivision thereof, shall restrict the information that is shared across public and private toll facility operators or their agents or contractors for purposes of facilitating, operating, or maintaining electronic toll collection programs.”*

INVEST also introduces new USDOT controls aimed at ensuring transparency and accountability. The **use of revenue** provisions require annual reports to USDOT for any bridge, tunnel, or highway conversions of free facilities to priced facilities, accounting for *“activities funded with such amounts and the amount of funding provided for each such activity.”* The **noncompliance** conditions for federally sponsored pricing projects grants USDOT the power to discontinue tolling in the event of noncompliance with all program requirements, until compliance is achieved. This provision may suppress interest in the federal program due to lack of revenue certainty generally required in many bond covenants.

Because the bill includes language allows for congestion pricing, including on the Interstate System, the INVEST bill **repeals the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) and sunsets the Value Pricing Pilot Program.**

The INVEST bill directs USDOT to study the viability of establishing a **toll credit exchange marketplace** (Section 1615, Toll Credits, p. 511), including potential impacts on transportation expenditures and the pricing that may be considered. This study contrasts with the Senate EPW bill to move forward and implement a toll credit exchange marketplace.

IBTTA intends to address areas of concern on tolling provisions with new legislative language proposals in advance of a Congressional Conference Committee to integrate a full House bill and full Senate bill into a final proposal for the White House.

### **VMT Fee Pilot Programs** (Sections 5401 and 5402 – pp. 995-1009)

The INVEST bill nearly doubles funding for **state-level Vehicle-Miles-Traveled (VMT) pilot programs** and directs program dollars towards implementation of successful state programs. Funding is limited to States or groups of States, as opposed to the Senate EPW bill which allow eligibility for regional and local organizations as well. Cybersecurity and data privacy have been added to the scope of the pilot programs.

The bill also establishes a new **National Surface Transportation System Funding Pilot to explore VMT fees** at a national scale by soliciting participants from all 50 states and the District of Columbia. The pilot shall include passenger vehicles and light and heavy commercial vehicles. The pilot establishes the prices to be charged for passenger/light commercial vehicles and heavy commercial vehicles trucks based on annual calculations of average motor fuel taxes paid by each vehicle class, rather than using the pilot to research appropriate pricing levels. The proposed pilot provides flexibility for the type of revenue-collection mechanism used, including

successful approaches employed in the VMT pilots implemented at the State level. The bill establishes an advisory board to guide the pilot's development and execution but does not include a toll industry representative as a required participant the advisory board; required participants include: State DOTs; any public or nonprofit entity that led a surface transportation system funding alternatives pilot project under section 6020 of the FAST Act; representatives of the trucking industry, including owner-operator independent drivers; data security experts with expertise in personal privacy; academic experts on surface transportation; consumer advocates; and equity advocacy groups.

### **Other Provisions of Interest:**

#### Section 1109. **Transferability of Federal-Aid Highway Funds** (p. 121)

- Limits transfers from certain programs – the Transportation Alternatives Program, Railway Crossing Program and Clean Corridors Program.
- Limits transfers out of carbon pollution reduction and air quality programs but maintains the ability to transfer up to 50% of contract authority per year between the Carbon Pollution Reduction Program and the Congestion Mitigation and Air Quality Program.

#### Section 1111. **HOV Facilities** (p.140)

- Adds an additional vehicle exemption for HOV facilities allowing agencies to exempt to emergency vehicles in the process of responding to an emergency or blood transport vehicles with deliveries.

#### Section 1112. **Buy America** (p. 142)

- Adds “construction materials” to Buy America
- Requires FHWA to issue a rule regarding increasing domestic content and to carry out research on domestic availability.
- Requires a public process before waiving Buy America requirements and requires the Secretary to reevaluate existing nationwide waivers every five years.

#### Section 1113. **Federal-Aid Highway Projects Requirements** (p. 149)

- Ensures prevailing wage requirements (i.e., Davis Bacon) apply to projects funded under the highway title and requires non-highway or multimodal projects follow labor requirements for the applicable mode.

#### Section 1201. **National Highway Performance Program** (p. 159)

- Emphasizes state of good repair and requires a consideration of operational improvements or transit before capacity expansions subject to structured cost-benefit analyses.
- Adds eligibilities for resiliency projects, evacuation routes, carbon pollution reduction, wildlife crossings and reconnecting communities.
- Requires consideration of climate change as part of transportation asset management plans.
- Allows eligibility for new capacity projects for single-occupancy passenger vehicles, with a series of state-of-good-repair standards and cost-benefit analyses that add resiliency and climate change.

#### Section 1202. **Increasing the Resilience of Transportation Assets** (p.164)

- Requires MPO and state long-range transportation plans to include mitigation and climate impact strategies and vulnerability assessments of critical transportation assets, evacuation routes and assets frequently damaged by disasters.
- Establishes a pre-disaster mitigation program (\$6.25 billion over 5 years) to fund projects identified by the MPO and state in the required vulnerability assessment, covering transportation resilience construction, project/program development, planning, and training.

- Funds implementation of natural infrastructure and preventive features, asset relocation and protection, and evacuation route capacity and development to address sea-level rise, flooding, severe weather events, wildfires, seismic activity, and landslides.

Section 1207. **Bridge Investment** (p.225)

- Streamlines project delivery for bridges in poor and fair condition and makes bundling of bridge resiliency projects is permissible.
- Eligibility includes seismic retrofits, corrosion control, systematic preventative maintenance, bridge inspections, bridge resiliency and natural infrastructure, and removal of structurally deficient bridges to improve community connectivity.
- Requires States to spend no less than 20% of their two largest apportioned programs on bridge repair and rehabilitation, with the flexibility to meet that goal over 4 years.

Section 1209. **Highway Safety Improvement Program [HSIP]** (p.235)

- Requires states, with regional and local partners, to identify high-risk corridors and hot spots and develop projects or strategies to reduce risks.
- Requires strategic highway safety plans to consider multimodal and system approaches to safety and the role of human error.
- Encourages the use of data-driven, multidisciplinary approaches to reducing fatalities and serious injuries.

Section 1211. **Electric Vehicle (EV) Charging Stations** (p. 255)

- Requires EV charging stations that receive federal highway funds must be usable by most EV drivers, accessible to the public and network capable.
- Directs USDOT to establish standards and guidance on EV charging stations and allows EV charging in the Interstate right-of-way, including rest areas and park-and-rides.

Section 1213. **Carbon Pollution Reduction** (p. 262)

- Creates a new carbon pollution reduction program (\$8.5 billion over 5 years) with broad flexibility to fund projects that reduce GHG emissions, including intercity buses and passenger rail under certain conditions.
- Requires USDOT to evaluate CO<sub>2</sub> emissions per capita on public roads annually in each state and issue a progress report.
- States with the most significant CO<sub>2</sub> reductions receive flexibility in federal share for projects and program transferability. States with the least progress in CO<sub>2</sub> reductions must dedicate additional federal funds to projects that reduce emissions.

Section 1307. **Rebuild Rural Bridges Program** (p. 352)

- Provides \$1 billion discretionary grants over 5 years for safety and state of good repair of bridges in rural communities to be used to inspect, replace, rehabilitate, or preserve off-system bridge. Grants may be provided for a single bridge or a bundle of bridges.

Section 1606. **Highway Formula Modernization Report** (p. 491)

- Directs FHWA, in consultation with state DOTs, to issue recommendations on how to update apportionment formulas and formula factors considering performance goals and measures, or other factors that yield a more data-driven or equitable apportionment of funding.

Section 1609. **Task Force on Developing a 21st Century Surface Transportation Workforce** (p. 498)

- Establishes a task force of representatives from surface transportation industries, labor organizations, and other experts to develop recommendations and strategies to address surface transportation workforce needs and ways to increase representation of women and minorities in surface transportation careers.

**Section 1618. Climate Resilient Transportation Infrastructure Study** (p. 518)

- Directs a TRB study related to climate resilient transportation.

**Section 1630. GAO Study on Per-Mile User Fee Equity** (p. 541)

- Directs the Government Accountability Office (GAO) to study the equity impacts of per-mile user fee systems, including their impact on underserved communities, access to jobs and services, effects on urban and rural areas, and impacts on passenger and commercial vehicles.

**Section 2203. Mobility Innovation** (p. 610)

- Creates new federal rules for mobility-on-demand services and mobility-as-a-service, allowing shifts of funding for urban, rural, and senior, and disabled populations to this program to take advantage of certain waivers. Restricts funding for single passenger trips, carbon and particulate emissions, and third-party contractors.

**Section 2911. Fixed Guideway Capital Investment Grants** (p. 610)

- Streamlines the Capital Investment Grant (CIG) approval process for new transit projects to be less burdensome.
- Modifies the Small Starts Program to increase the federal cost cap to \$320 million and the total cost cap to \$400 million, allowing more small projects a streamlined approval process. These modifications fall short of the changes several IBTTA members were seeking for Bus Rapid Transit (BRT) operations in “Express Transit Lanes”, which was seeking to raise the total project funding cap for the Small Starts program to \$600 million and increase the federal share to \$360 million.

**Section 3002. Highway Safety Programs** (p. 770)

- Creates new state highway safety program eligibilities and enhances public review opportunities of state highway safety plans.
- Requires states with legalized marijuana to consider increasing public awareness related to marijuana-impaired driving.

**Section 3009. National Priority Safety Program Grant Eligibility** (p. 806)

- Requires the Secretary to list all deficiencies that made a state ineligible for a certain highway safety grant.

**Section 5301. Mobility through Advanced Technologies** (p. 948)

- Requires USDOT prioritize programs that improve mobility, decrease congestion, increase safety, and reduce emissions.
- Expands eligible uses of funds to include vehicle-to-pedestrian safety systems, vulnerable road user safety systems, cybersecurity protections, and mobility-on-demand activities.
- Enhances reporting requirements. Increases funding to \$70 million per year and expands the federal share of the program to 80%.

**Section 5302. Intelligent Transportation Systems (ITS) Program** (p. 956)

- Adds consideration of greenhouse gas emissions reduction throughout the ITS program. Reauthorizes the ITS Program Advisory Committee. Removes set-asides that previously took funding away from ITS activities.

**Section 5303. National Highly Automated Vehicle and Mobility Innovation Clearinghouse** (p. 960)

- Establishes a national clearinghouse at a university to research the impacts of highly automated vehicles and mobility innovation (Mobility on Demand and Mobility as a Service) on land use, urban design, transportation, real estate, accessibility, municipal budgets, social equity, and the environment.

Section 5304. **Study on Safe Interactions between Automated Vehicles and Road Users** (p. 962)

- Directs a USDOT study of how automated vehicles will safely interact with general road users, including vulnerable road users such as bicyclists and pedestrians.
- Establishes a working group of road users to guide the study.

Section 5305. **Non-Traditional and Emerging Transportation Technology Council** (p. 970)

- Authorizes the Non-Traditional and Emerging Transportation Technology (NETT) Council to develop cohesive regulatory practices for novel transportation technologies presented to USDOT.

Section 5306. **Surface Transportation Workforce Retraining Grant Program** (p. 973)

- Establishes a workforce retraining grant program for transportation workers whose jobs have been or will be affected by automation. The program will award grants to eligible entities to test new roles for existing jobs, to develop degree or certification-granting programs, and for direct worker training or train-the-trainer programs.

Sections 5307 & 5308. **Third-Party Data Integration and Planning Data Integration Pilot Programs** (p. 979)

- Establishes pilot program to leverage anonymous crowdsourced data from third-party entities to implement integrated traffic management systems and improve transportation planning.

Section 7001. **Transportation Infrastructure Finance and Innovation Act** (p. 1025)

- Raises the threshold above which projects require multiple credit rating opinions.
- Clarifies that proceeds from a TIFIA loan are considered part of the non-federal share of a project.
- Clarifies the criteria to be eligible for the streamlined application process.
- Modifies USDOT reporting and requires public monthly status reports on TIFIA applications and projects.

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