America's Transportation Infrastructure Act (ATIA) of 2019

S. 2302

Draft Summary as of August 9, 2019 by the
Association of Metropolitan Planning Organizations

The Senate Environment and Public Works (EPW) Committee publicly released AITA 2019 on July 29, 2019. The Committee unanimously approved (23-0) and reported the amended bill on July 30th. There were no controversial provisions raised in committee. Several Senators wanted to expand the list of alternative fuels listed in the section on the refueling and charging program but agreed to work with the Committee as the bill moves. Five pre-approved amendments were accepted. With this action, the EPW Committee has taken the first step in reauthorizing a surface transportation bill. The FAST Act expires on September 20, 2020. ATIA is in the sole jurisdiction of the EPW Committee and therefore only authorizes the highway and highway safety provisions under federal law. The transit, rail, trucking, research, and other safety provisions are in the jurisdiction of several other Senate committees. Paying for the bill is in the jurisdiction of the Senate Finance Committee – *this bill is not paid for*. Keep in mind that in addition to paying for the EPW committee bill (highways), more revenue will be required to pay for the other parts (transit, trucking, safety) of the final surface transportation bill.

The House Transportation & Infrastructure Committee continues to conduct oversight and legislative hearing but have not released any legislative text. We assume the House T&I Committee will release a bill next year. The EPW Committee's action could put some pressure on other committees and the House to move transportation bills, as well as, to spur more discussions on how to pay for a bill and future investments in transportation.

ATIA would also repeal the $7.6 billion rescission in the FAST Act. The rescission takes effect on July 1, 2020.

With the recent budget agreement between the President and Congress, the FY 2020 transportation appropriation bill is likely to be the only transportation related funding bill to pass before the end of the year. The over-arching issue for ATIA and whatever bill the House produces will continue to be "how to pay for" the next bill. Funding a bill that increases spending will require additional amounts of new revenue above the current gas and diesel taxes. It will require a bipartisan agreement to fund and pass the next surface transportation bill. The bill would need roughly $83 million in new revenue to pay for the increase in ATIA.

Extension – If Congress fails to pass a reauthorization bill on time there will likely be an extension of the FAST Act past the September expiration date. Historically, extensions have been enacted when Congress fails to agree on how to pay for surface transportation. The HTF may have sufficient revenue to go in to FY21, and the Congressional Budget Office (CBO) will continue to apprise Congress of how long the HTF can continue to meet obligations past September 30, 2020.

Selected Funding Authorizations in ATIA

The bill provides a total of $287 billion in contract authority, over five years, from the highway account of the Highway Trust Fund. This is a 27% increase above the FAST Act.

The bill continues to apportion funds to states using the same formula in the FAST Act.

The bill continues to provide each state with at least 95 % of the dollars it paid into the HTF Highway Account and adds that each state's dollar apportionment is at least 2% greater than 2020, and at least 1% higher than the previous year.

Highway Trust Funded Program	ATIA 2021	ATIA 2022	ATIA 2023	ATIA 2024	ATIA 2025
Core Highway Programs Funding: NHPP, STBGP, CMAQ, HSIP, NHFP, Planning	$47,855,749,000 ($1,625,000,000)	$48,829,248,000 ($1,660,000,000)	$49,849,443,000 ($1,700,000,000)	$50,914,302,000 ($1,740,000,000)	$51,979,162,000 ($1,775,000,000)
TIFIA (Finance)	$300,000,000	$300,000,000	$300,000,000	$300,000,000	$300,000,000
Nationally Significant Freight and Highway Projects (INFRA Grants)	$1,050,000,000	$1,075,000,000	$1,100,000,000	$1,125,000,000	$1,150,000,000
NEW – Bridge Investment Program	$600,000,000	$640,000,000	$650,000,000	$675,000,000	$700,000,000
New Congestion Relief	$40,000,000	$40,000,000	$40,000,000	$40,000,000	$40,000,000

(Federal Lands, Tribal, and Territories/Puerto Rico, and several other smaller programs are not included)

Estimated Annual Planning Funds	$385,700,000	$393,600,000	$401,800,000	$410,400,000	$419,000,000

In 2019 Metropolitan transportation planning was apportioned $350,278,156 according to FHWA apportionment tables - https://www.fhwa.dot.gov/legsregs/directives/notices/n4510831/n4510831_t1.cfm

FHWA estimate that in 2020 Metropolitan Planning will be funded at $358,516,037.

Selected Policy in ATIA

Project Delivery - The bill continues the effort to accelerate projects through the federal review process by making permanent in law the 2-year goal for completion of environmental reviews; a 90-day timeline for related project authorizations; a single environmental document and record of decision to be signed by all participating agencies; and an accountability and tracking system managed by the Secretary of Transportation. The bill would limit reviews by other agencies and require other agencies to adopt the list of USDOT categorically excluded projects.

National Highway Performance Program (NHPP) – The final year of the FAST Act provides $24.2 billion. Under ATIA funding would increase to $27.2 billion in 2021 and grow to $29.5 billion by 2025. The bill adds a focus on measures that increase resiliency to environmental impacts and natural disasters. The bill would also allow States to use up to 15 % of their NHPP funds for protective features to improve resiliency of a Federal-aid highway or bridge off the National Highway System.

Surface Transportation Block Grant Program (STBGP) - The final year of the FAST Act provides $11.3 billion. Under ATIA funding would increase to $12 billion the first year and grow to $13 billion in 2025. Supplemental funding under the STBGP for Transportation Alternatives Program (TAP) in the last year of the FAST

Act is $850 million. Under ATIA, TAP would grow to $1.2 billion in 2021 to $1.3 billion in the last year, and amounts suballocated by population would grow to 57.5%. The suballocation of non-TAP funding to urbanized areas would remain at 55%. There is some increased flexibility to explicitly allow funds to be used for resiliency improvements, privately-owned ferries and wildlife and rural-focused provisions. ATIA also makes eligible rural barge landings, docks, and waterfront infrastructure in Alaska, and allows funding for a bridge project that replaces a low water crossing as defined by the Secretary.

Congestion Mitigation and Air Quality Improvement Program (CMAQ): The bill would make modifications to the program including expanding eligibility to modernize or rehabilitate a lock and dam, or if the project is on a marine highway corridor, connector or crossing (including inland waterway corridors) if the project is functionally connected to the Federal-aid system and if the Secretary determines it is likely to contributed to attainment or maintenance (states cannot obligate more than 10% for these new eligibilities). Operating assistance under CMAQ is expanded to State-supported Amtrak routes under specific conditions. ATIA specifically establishes a no time limitation on operating assistance for areas that receive transit funds for operations, for specified Amtrak routes, or transit systems in non-urbanized areas or non-TMAs, which would indicate that there may be time limitations on operating assistance in urbanized areas above 200,000 in population.

Nationally significant freight and highway projects (NSFHP) (Also known as INFRA grants) – The program continues to be funded at just over $1 billion throughout ATIA. ATIA raises the cap on eligible multimodal projects to 30 % of program funds and requires that a portion of funds go toward certain critical rural and urban state projects. The bill increases the minimum amount for small projects, increases the federal share allowable for small projects, and requires that not less than 30 % of funds reserved for small projects be used for certain projects in rural areas. It adds new consideration of freight resilience, creates new set-aside of $150 million per year of NSFHP funds for a pilot program to encourage applicants to expand their non-Federal share of project costs and also expands the program's transparency requirements.

TIFIA - The bill updates the TIFIA program, streamlines the application process, and increases transparency in the vetting process for projects seeking TIFIA funds. It expands program eligibility to airport projects and additional transit-oriented development projects, subject to a cap and sunset. The bill extends the authorization of State Infrastructure Bank program through fiscal year 2025. ATIA flatlines the funding for TIFIA at $300 million.

NEW Bridge Investment Program – Establishes a new competitive grant program to assist State, local, and tribal entities to rehabilitate or replace structurally deficient bridges. In addition to the annual funding from the HTF, ATIA also authorizes another $600 (2021) -$700 (2025) million per year from the general fund, which is subject to annual appropriations. For large bridge projects (over $100 million in cost), the bill creates a new multi-year funding commitment process similar to the "full funding grant agreement" process used for Federal Transit Administration new starts.

Establishes a ***toll credit*** exchange on a pilot basis to enable the Secretary to evaluate the feasibility of and demand for a toll credit marketplace through which States could sell, transfer, or purchase toll credits.

Subtitle B – Planning and Performance Management

Section 1201 - Transportation Planning (MPO)

- When designating representatives of the board for the first time consider the equitable and proportional representation of the population of the planning area.
- More than one MPO may be designated within “an urbanized area” instead the “existing metropolitan planning area.”
- Non-attainment area - If more than one MPO has authority in “an urbanized area” rather than “the metropolitan area” they need to consult with each other and the state.
- Requires multiple MPOs in the same urbanized are to ensure, to the greatest extent practicable, consistency of data used in planning, including forecasting travel demand. There is no requirement to jointly develop the long-rang plan or the TIP.
- A state (*follow up needed for MPO requirement) may use social media and other web-based tools to encourage public participation may use social media and other web-based tools to encourage public participation.

Section 1202 - Requires the Secretary of USDOT to amend the regulations and change the outer years of the long-range plan to beyond the first 4 years rather than the current 10 years. Would likely require a rulemaking process.

Section 1203 – State Human Capital Plans - The section encourages states to develop a voluntary 5-year human capital plan addressing short- and long-term workforce needs to be updated every five years. Plans shall include policies, strategies, and performance measures to address workforce needs and challenges by coordinating with agencies and organizations such as educational institutions, industry, organized labor, and workforce boards. Plans will cover both recruitment and retainment and may be incorporated into LRTPs if the state desires.

Section 1204 – Accessibility Data Pilot Plan – Requires the Secretary to establish a pilot program to procure an accessibility data set and make the data available to program participants to improve transportation planning. States, MPOs (both TMA and non-TMA), and RPOs are eligible to apply. Funding is from administrative funds of the Secretary.

Section 1205 – Prioritization Process Pilot Program – The Secretary shall establish a program with the purpose of supporting data-driven approaches to planning that, on completion, can be evaluated for public benefit. States and MPOs over 200,000 may participate. MPOs under 200,000 may partner with the state. Participants would develop and use priority objectives, assess and score projects, use the scores to guide project selection in the development of the plan and TIP, provide clear reasons why projects are selected, and allow public comment before decisions are made. The bill details the process for MPOs and states. If a recipient implements this process, they may use any remaining funds for any transportation planning purpose. The program is funded with $10 million per year, and no individual grant may exceed $2 million.

Section 1206 – Exemptions for Low Population Density States – This establishes a process to provide an exemption to low population density states and MPOs within those states from one or more performance measures requirements. Exemptions last 4 years and can be renewed. A state that meets the population density requirement cannot have an urbanized area over 200,000 in population and, must not have repeated delays to travel reliability on the NHS in the state.

Section 1207 – Travel Demand Data and Modeling – Requires the Secretary to carry out a study, every 5 years, that gathers travel data and travel demand forecasts from a sample of States and metropolitan planning organizations and uses the data and forecasts gathered to compare travel demand forecasts with the observed data. The Secretary shall use the information to develop best practices or guidance to use in forecasting travel demand for future investments in transportation improvements, evaluate the impact of the investments on travel behavior and demand, support more accurate forecasting, and enhance the capacity of states and MPOs to forecast travel demand, and travel behavior.

Section 1208 - Increasing Safe and Accessible Transportation Options - Requires states and MPO to use 2.5% of planning funds to carry out one of more of the listed activities – 1) adopt complete street standards, 2) develop a complete streets prioritization plan, 3) develop a comprehensive transportation plan that creates a network of active transportation facilities, integrates active transportation facilities with public transportation, creates multiuse active transportation infrastructure facilities, increases public transportation ridership, and improve safety for bikes and pedestrians, 4) regional and megaregional planning to address travel demand and capacity constraints through alternatives to new highway capacity, including through intercity passenger rail; and (5) development of transportation plans and policies that support transit-oriented development. Funding for these planning activities is 100% federal share.

<u>Subtitle D - Climate Change</u>

Section 1401 – Grants for Charging and Fueling Infrastructure - Establishes a competitive grant program to deploy alternative fuel vehicle charging and fueling infrastructure along designated alternative fuel corridors that will be accessible to all drivers of electric, hydrogen, and natural gas vehicles. Grant funds are used to contract with private entities for acquisition and installation of the necessary infrastructure to support the facility. The bill provides $100 million in 2021 growing to $300 million 2025.

Section 1402 – Establishes a competitive grant program to study and fund projects to reduce idling and emissions at port facilities, including port electrification projects. Provides $70 million in 2021 and grows to $90 million in 2025.

Section 1403 – Carbon Reduction Incentive Program establishes a new formula grant program to encourage reduced carbon emissions. States will receive an average of $600 million per year in funding under the bill. States receive shares of the money equal to their shares of total formula apportionments for that year. Half of each year's formula money must fund activities to reduce transportation emissions (specifically defined in the section), and the other half can be used for any STBGP-eligible project if the state is developing or implementing carbon reduction strategies. The federal share is generally 80 %, except that for states that are developing or implementing carbon reduction strategies, the federal share can be up to 100%. Sixty-five percent (65%) of program funding is to be suballocated by population. No funds can be used to construct new capacity for single occupancy vehicles. States shall consult with non-TMAs and, and RTPO or MPO in rural areas prior to determining which activities should be carried out.

Section 1403 - Carbon Reduction Performance Program – MPOs, qualifying states, and qualifying units of local governments may receive grants in recognition of the achievement in meeting performance categories established in the bill, such as significantly reducing transportation emissions, or innovative planning and implementation of a carbon reduction strategy. Priority can be given to those who achieved the most significant reductions. Awards are capped at $30 million and cannot be less than $5 million. Use of the grants is broad and can be used for any activity under Title 23. Federal share of a project using grant funds can be up to 100 %.

Section 1404 – See Congestion Relief Program - See new grant programs below.

Section 1407 - PROTECT Grants – Establishes a supplemental formula and competitive grant program to help States improve the resiliency of transportation infrastructure. The bill provides $786 million and $200 million from the Highway Trust Fund for formula and competitive grants, respectively, for each of fiscal years 2021 through 2025. States receive shares of the money equal to their shares of total formula apportionments for that year. No less than 2% of the funds shall be set aside for specified planning activities. Funds can be used for a highway or transit project, intercity rail, or port facilities. The federal share can't exceed 80%, but other federal funds may be used for the non-federal share. There is a 25% cap on building new capacity, and a 10 % cap on development phase activities.

Competitive grants may be awarded to states, MPOs, unit of local government and other defined entities. The Secretary shall award planning grants to states and MPOs for developing a resilience improvement plan. The Secretary shall also award Resiliency grants, Community Resilience and Evacuation Route grants, and At-Risk Coastal Infrastructure grants for specified activities. If a state or eligible entity meets applicable requirements the non-federal share can be reduced.

Other Policy

Section 1508 – Community Connectivity Pilot Program – Establishes a program to remove a highway or other transportation facility that creates a barrier to community connectivity, including barriers to mobility, access, or economic development, due to high speeds, grade separations, or other design factors. Funding may be used to study impacts of removal, planning, and construction. The Secretary may award grants to carry out planning activities such as feasibility studies to evaluate traffic patterns, capacity of transportation networks, effects of removing eligible facilities, and other activities listed. The bill provides $20 million in 2021 decreasing to $2.5 million in 2025 planning grants. The Secretary may also award construction grants for eligible activities such as removal and replacement of eligible facilities. Construction grants must be at least $5 million, and not exceed 50 % of the total cost of the project. Other federal funds may be used for the federal share not to exceed 80 % of the total costs. $14 million per year is provide for capital construction grants.

Section 1124 – Safety Incentives Programs – Establishes a formula safety incentive program and a fatality reduction performance program. The formula program provides $500 per year to be distributed to states in the same shares as the states overall share of apportioned core formula programs. States shall use 50 % of the funds for a highway safety improvement project or strategy included on the state strategic highway safety plan. 65 % of the state's funding is suballocated by population. An MPO that is required to obligate funds shall use the funds for highway safety improvement projects as defined under the Highway Safety Improvement Program. A state that is a vulnerable road user safety focus area, as defined in the bill, shall use those funds to improve the safety of vulnerable road users regardless of whether the project is included on the state strategic highway safety plan. MPOs are required to do the same for vulnerable road user safety focus areas. A state may, in consultation with metropolitan planning organizations, develop and publish a state vulnerable road user safety assessment. The Secretary shall use authorities under law to accelerate potential safety projects identified in the assessment. The other 50% may be used for STBGP projects if the state has conducted and published a vulnerable road user safety assessment approved by the Secretary or for a state that already has an approved assessment and meets additional conditions, can receive a federal share up to 100 %, otherwise the second 50 % must be spent like the first half.

Performance program – $100 million per year. States or local governments where the rolling 3-year average fatality and serious injury rates per 100 million VMT and per capita and the average per capita fatalities have all grown more slowly or declined compared to the prior averages can apply to

USDOT for grants to reward this achievement. Grants awards may not be less than $5 million and may not be more than $30 million. Grants can be used for any eligible title 23 activity at a 100 % federal share.

The bill establishes several new formula and grant programs:

- Charging and Fueling Program – Establishes a competitive grant program to deploy alternative fuel vehicle charging and fueling infrastructure along designated alternative fuel corridors that will be accessible to all drivers of electric, hydrogen, and natural gas vehicles. The bill provides $100 million in 2021 growing to $300 million 2025.
- Formula Safety Incentive Program – Provides supplemental formula and competitive grant funds to States and urbanized areas to expand and incentivize investments in transportation safety projects. Authorizes $500 million and $100 million per year from the Highway Trust Fund for formula and competitive grants, respectively, for fiscal years 2021 through 2025.
- Fatality Reduction Performance Program – – States or local governments that have demonstrated a reduced number of fatalities and serious injuries based on several factors under a rolling 3-year average may receive an award. The Secretary shall select winners in any of these performance categories: reducing per capita serious injuries and fatalities, reducing rates of serious injuries and fatalities per VMT, having among the lowest per capita serious injuries and fatalities, having among the lowest per-VMT serious injury and fatality averages, or innovative safety efforts. Grant awards may not be less than $5 million and may not be more than $30 million. Grants can be used for any eligible title 23 activity at a 100 % federal share.
- Formula Carbon Reduction Incentive Program/Carbon Reduction Performance Program – Provides supplemental formula and competitive grant funds to States to expand investment in transportation improvements designed to reduce on-road mobile sources of carbon, and to incentivize planning and investments to reduce carbon emissions. Authorizes $600 million and $100 million per year from the Highway Trust Fund for formula and competitive grants, respectively, for each of fiscal years 2021 through 2025.
- Wildlife Crossing Safety - $250 million wildlife crossing pilot program to provide grants for projects designed to reduce wildlife-vehicle collisions and improve habitat connectivity.
- PROTECT Grants – Establishes a supplemental formula and competitive grant program to help States improve the resiliency of transportation infrastructure. This bill provides $786 million and $200 million from the Highway Trust Fund for formula and competitive grants, respectively, for each of fiscal years 2021 through 2025.
- Reduction of Truck Emissions at Port Facilities – Establishes a competitive grant program to reduce idling and emissions at port facilities, including port electrification projects. Provide $70 million in 2021 and grows to $90 million in 2025.
- NEW Congestion Relief Program – ATIA would establish a new $40 million per year, discretionary grant, program to reduce highway congestion in urbanized areas over 1 million in population. An eligible project may include the deployment and operation of a system that implements or enforces high occupancy vehicle toll lanes, cordon pricing, parking pricing, or congestion pricing. States or MPOs over 1 million in population may apply. The federal share cannot exceed 80% of the total project cost, and a grant may not be less than $10 million. A tolling project may be on the US Interstate, but no more than 10 Interstate projects can be approved under specific conditions. Amends the law to require public authorities to charge lower tolls on facilities constructed or converted after ATIA becomes law unless travel time is reduced because of the lower tolls.