

# \$1.2 Trillion Bipartisan Infrastructure Bill Heads to President's Desk

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## ***LANDMARK BILL REPRESENTS A MAJOR COMPONENT OF THE BIDEN ADMINISTRATION'S BUILD BACK BETTER AGENDA***

On November 5, the U.S. House of Representatives passed a bipartisan \$1.2 trillion “physical” infrastructure bill, paving the way for enactment of a major component of President Biden’s “Build Back Better” domestic infrastructure agenda. The *Infrastructure Investment and Jobs Act* (IIJA) H.R. 3684 – also known as the Bipartisan Infrastructure Deal – was passed by the House by a [vote of 228-206](#), with 13 Republicans joining all but six Democrats in supporting the measure. The bill now awaits the President’s signature, nearly three months after Senate passage.

The IIJA contains approximately \$550 billion in new infrastructure spending, over current spending levels, for a total of \$1.2 trillion over the next five years. The bill covers roads and bridges, public transit, freight and passenger rail, safety and research programs that are typically included in five-year surface transportation reauthorizations. Additionally, it makes major investments in drinking and wastewater infrastructure; pipelines; ports and airports; while funding “new economy” infrastructure, such as broadband deployment and adoption, grid security and resiliency, and clean energy programs (e.g., electric vehicle infrastructure and carbon capture). The bill also includes major domestic procurement (“Buy America”) requirements for infrastructure materials. The IIJA includes supplemental appropriations to support many of its authorized programs, while others are left to be funded via the annual Congressional appropriations process.

A high-level summary of the bill is as follows:

### **SURFACE TRANSPORTATION AND PUBLIC TRANSIT**

#### ***Highways and Bridges***

The largest investment the IIJA makes is a 5-year (FY22-26) reauthorization of federal-aid highway programs for a total of \$273.2 billion. The authorization covers state apportionments for federal highway construction, as well as Surface Transportation Block Grants and other programs. The IIJA sets obligation limits on federal-aid highway and highway safety construction programs, totaling \$300.3 billion over the five-year period.

The bill also transfers \$90 billion to the Highway Trust Fund (HTF) for highways and \$28 billion for mass transit, and it authorizes \$3.27 billion from both the HTF and the Treasury general fund over five years for new grants to repair and replace bridges.

The IIJA authorizes the following amounts over five years, mostly from the HTF:

- \$4.8 billion for renamed Nationally Significant Multimodal Freight and Highway Projects, also referred to as the Infrastructure for Rebuilding America (INFRA) grant program. An additional \$6 billion is authorized from the Treasury general fund.
- \$2.56 billion for FHWA administrative expenses.
- \$2 billion for the Rural Surface Transportation Grant Program.
- \$1.25 billion for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.
- \$570 million to construct ferry boats and terminal facilities.
- \$500 million for a pilot program offering grants to explore removing or retrofitting transportation facilities that created community barriers to mobility or economic development.

The IIJA also authorizes \$1 billion over five years from the general fund for grants to connect walking and biking infrastructure.

The IIJA codifies core elements of the “One Federal Decision” policy for major surface transportation projects, including establishing a two-year goal for completion of environmental reviews, as well as page limits for environmental documents.

### ***Rail and Public Transit***

The IIJA makes an additional \$66 billion in passenger and freight rail investments over the next five-years and addresses several recommendations included in the 2021 Infrastructure Report Card, such as sustained investments in the Northeast Corridor, providing funding for regional freight rail investments, and funding to reduce hazards at railway crossings. Notably, within these totals:

- \$22 billion would be provided as grants to Amtrak;
- \$24 billion for federal-state partnership grants for Northeast Corridor modernization;
- \$12 billion for partnership grants for intercity rail service, including high-speed rail;
- \$5 billion for rail improvement and safety grants; and
- \$3 billion for grade crossing safety improvements.

For public transit, the bill would provide \$69.9 billion in contract authority from the mass transit account from fiscal 2022 through 2026 for the main formula-based transit grant programs. The fiscal 2022 allocation would be \$13.4 billion. Allocations of grant funds over the five-year period would include:

- \$33.5 billion for Urbanized Area Formula Grants;
- \$18.4 billion for the State of Good Repair Grants Program for upgrading older rail and bus systems in urbanized areas;
- \$4.58 billion for public transportation in rural areas;

- \$3.16 billion for bus and facility formula grants; and
- \$2.34 billion for low- or zero-emission bus grants.

## **DRINKING WATER AND WASTEWATER**

Through a combination of supplemental appropriations and future authorized annual spending, the IIJA makes a massive investment in the primary federal assistance programs for clean and drinking water infrastructure.

The IIJA reauthorizes the Environmental Protection Agency (EPA) administered Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs each at the following spending levels, respectively (subject to appropriations):

- \$2.4 billion for FY 2022;
- \$2.75 billion for FY 2023;
- \$3 billion for FY 2024; and
- \$3.25 billion for FY 2025 and FY 2026.

The IIJA authorizations for the DWSRF and CWSRF reflect \$13.8 billion in new authorized spending (subject to annual fiscal year appropriations). For context, according to the Congressional Research Service, for FY 2017 through FY 2021, Congress on average appropriated \$1.1 billion to the DWSRF and \$1.6 to the CWSRF.

Notably, the IIJA provides \$55 billion in supplemental appropriations, which includes a massive \$43 billion capital infusion into the revolving loan funds over five years. Specifically, the bill provides supplemental appropriations to both the CWSRF's general program and the DWSRF general program, respectively, at:

- \$1.902 billion for FY 2022;
- \$2.202 billion for FY 2023;
- \$2.403 billion for FY 2024; and
- \$2.603 billion for FY 2025 and FY 2026, respectively.

Almost half of the supplemental appropriations provided to the SRFs is directed to be used as grants for principal forgiveness, a notable contrast to the revolving loan funds' traditional requirements of principal repayment and interest.

In addition to the supplemental appropriations for the SRFs general programs, the IIJA provides supplemental appropriations to these EPA programs to address emerging contaminants, with a focus on per and polyfluoroalkyl substances (PFAS), and lead service line replacements.

The IIJA reauthorizes the EPA's lead reduction program and increases its authorized spending level to \$100 million annually through 2026. It also expands the EPA's Voluntary School and Childcare Lead Testing Grant Program to expand grant eligibility to public water systems and nonprofits for lead

monitoring and lead reduction projects. It also authorizes a host of programs within EPA to provide technical and operational assistance to public water systems, particularly those that are small, as well as programs intended to assist rural and low income communities. The IIJA also authorizes the EPA to establish new grant programs to address water system resiliency to natural hazards and cybersecurity threats.

## **PORTS, WATERWAYS AND AIRPORTS**

Overall, the IIJA invests approximately \$17 billion in port infrastructure and waterways and \$25 billion in airports to address repair and maintenance backlogs, reduce congestion and emissions near ports and airports.

For ports, the bill provides \$3.42 billion through the General Services Administration to build and repair Customs and Border Protection stations and land ports-of-entry as well as \$2.25 billion for the Maritime Administration's port infrastructure development program. Additionally, eligible projects would be expanded to include those that make ports more resilient to rising sea levels, extreme weather, earthquakes, and tsunamis, as well as those that reduce port-related greenhouse gas emissions.

Over the bill's 5-year period, \$80 million per year is allocated for a U.S. Department of Transportation (DOT)-led competitive grant program to reduce port-related emissions from idling trucks. The bill also provides more than \$9.5 billion for Army Corps of Engineers infrastructure priorities and another \$429 million for Coast Guard infrastructure priorities.

For airports, the bill provides funding in several areas: \$15 billion in formula funding for Airport Improvement Program projects; \$5 billion for airport terminal development projects; and \$5 billion for Federal Aviation Administration facilities and equipment, including FAA-owned contract towers. The bill also extends eligibility for Transportation Infrastructure Finance and Innovation Act (TIFIA) loans to airport projects and economic development projects related to rail stations.

## **BROADBAND DEPLOYMENT AND ADOPTION**

The IIJA includes \$65 billion in funding for broadband deployment and affordability – funding the White House [says](#) will “help ensure every American has access to reliable high-speed internet.” The centerpiece of the bill's broadband title is more than \$42 billion allocated for formula-based grants to states to speed broadband deployment, with 10 percent of the funding set-aside for unserved high-cost areas. Under this Broadband Equity, Access, and Deployment Program, which will be administered by the Commerce Department's National Telecommunications and Information Administration (NTIA), states will submit a “5-year action plan” with their initial request, and will be required to coordinate with local and regional entities in distributing funding. In addition, funds will be prioritized to unserved areas – states must certify that 100% of unserved areas are met before they fund deployment projects in underserved areas. A 25% matching fund requirement will apply, except that NTIA may waive the matching requirement for high cost areas. Additionally, new networks will be required to meet minimum quality standards and provide at least one tier of affordable service.

The bill allocates \$14.2 billion to establish an Affordable Connectivity Program (ACP), which expands the Emergency Broadband Benefit (EBB) established to help low-income families afford landline or mobile broadband services during the Covid-19 pandemic. Under the new permanent program, low-income families will be eligible for a \$30 per month discount toward any broadband service plan from a participating provider. While the monthly benefit is reduced from \$50 to \$30, eligibility is

expanded from households with income at or below 135% of the Federal Poverty Guidelines to 200% and to include participants in the special supplemental nutritional program for women, infants, and children (WIC). In addition, participating providers are not limited to those providers with a broadband offering as of December 1, 2020 like the EBB program. The ACP is open to any broadband provider. The bill provides for a 60-day transition from EBB to ACP benefits at the end of this year, so the Federal Communications Commission will need to conduct an expedited rulemaking for the transition to the ACP.

In addition, the bill includes \$2.75 billion in funding for the *Digital Equity Act of 2021*, which will establish two new grant programs – one formula-based and one competitive – to promote digital inclusion and equity in communities nationwide. Both grant programs would be administered by NTIA and recipients will be able to put the funding toward a variety of initiatives to accelerate the adoption of broadband and increase digital literacy in historically underserved communities. NTIA is also tasked with evaluating the efficacy of digital inclusion projects and sharing the results with policymakers at the national, state and local level.

Other broadband initiatives include:

- \$1 billion for the establishment on a “Middle Mile” grant program for the construction, improvement, or acquisition of middle mile broadband infrastructure to help deploy affordable high-speed internet to unserved areas. Eligible entities include telecommunications / technology companies and utilities as well as non-profits. The amount funded under this program may not exceed 70% of the project’s total costs.
- \$2 billion for Tribal Broadband Connectivity Program grants for broadband deployment, digital inclusion, workforce development, telehealth, and distance learning.
- \$2 billion for the Department of Agriculture to support broadband deployment in rural areas.
- A provision allowing states to issue private activity bonds to help finance qualified broadband projects in areas where access and quality is limited.
- A provision requiring the Federal Communications Commission (FCC) to promulgate regulations to require the display of broadband consumer labels to disclose to consumers information regarding broadband internet access service plans. The labels were initially proposed by the Commission’s Consumer Advocacy Committee in 2015 pursuant to the 2015 Open Internet Order (net neutrality).
- A provision requiring the FCC to adopt final rules to facilitate “equal access” to broadband internet access service. “Equal access” is defined as “the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions.”

And more broadly, the IIJA includes several communications workforce provisions. The bill requires:

- The establishment of an interagency working group – led by the FCC and the Department of Labor – to develop recommendations to address the workforce needs of the telecommunications industry;
- The issuance of guidance on how states can address the workforce needs and safety of the telecommunications industry; and

- A Government Accountability Office (GAO) assessment of the workforce needs of the nation's telecommunications industry.

## **GRID SECURITY, CLEAN ENERGY AND ENVIRONMENT**

The IIJA includes in its entirety the Energy Infrastructure Act, authored by Senate Energy and Natural Resources Committee Chairman Joe Manchin (D-WV). The sweeping legislation funds investments in grid resiliency and security; clean energy supply chains; carbon capture and hydrogen fuels; and energy efficiency. Additionally, beyond the Energy Infrastructure Act, the IIJA also includes major investments to electrify the nation's transportation sector.

### ***Grid Resiliency and Security***

The bill authorizes approximately \$65 billion for grid infrastructure, targeting reliability and resiliency, including:

- \$5 billion in funding for a Department of Energy (DOE)-led grant program to enhance grid resiliency by reducing the impacts of extreme weather, wildfires, and natural disasters;
- \$5 billion in funding for a new "Upgrading Our Electric Grid Reliability and Resiliency" program to provide federal financial assistance to demonstrate innovative approaches to transmission, storage, and distribution infrastructure, as well as an additional \$1 billion for reliability and resiliency efforts in rural or remote areas.
- A \$2.5 billion revolving loan fund to allow DOE to serve as an "anchor-tenant" for a new or upgraded transmission line. DOE may buy up to 50 percent of the planned capacity (that capacity can be sold later, once DOE determines the project has ensured financial viability). DOE is also authorized to issue loans to or enter into public private partnerships with eligible transmission projects.
- \$3 billion for a Smart Grid Investment Matching Grant Program to support the deployment of technologies to enhance grid flexibility.

Other provisions would fund initiatives to enhance both the physical security and cyber security of the electricity sector. These include the establishment of a program to promote and advance the physical and cybersecurity of electric utilities and a new voluntary Energy Cyber Sense program, as well as the development of incentives for advanced cyber security technology investments. \$250 million is authorized for grants and technical assistance for rural and municipal utilities to detect, respond to, and recover from cyber threats. Additional funding is allocated for the Cybersecurity for the Energy Sector RD&D program; the Energy Sector Operational Support for Cyberresilience Program; and Modeling and Assessing Energy Infrastructure Risk.

### ***Supply Chains***

The bill also includes provisions to build out domestic supply chains for clean energy technologies, funding initiatives ranging from a DOE rare earth element extraction and separation facility and refinery to funding for domestic battery processing, manufacturing and recycling. The bill also aims to improve the federal permitting process with respect to critical mineral production on Federal land. Further, the bill expands DOE's Innovative Energy Loan Guarantee (Title XVII) program to make eligible projects that increase the domestic supply of critical minerals.

### ***Carbon Capture and Hydrogen***

The IIJA – through the Energy Infrastructure Act – includes funding to facilitate the buildout of carbon capture infrastructure, including \$100 million to expand DOE’s Carbon Capture Technology program to include front-end engineering and design for carbon dioxide transportation infrastructure and \$2.1 billion for the establishment of a new CO2 Infrastructure Finance and Innovation Act (CIFIA) program to provide low-interest loans for carbon dioxide transport infrastructure projects. Another \$2.5 billion would help expand DOE’s Carbon Storage Validation and Testing program to include large-scale commercialization of carbon sequestration and transport projects. And \$3.5 billion is authorized for regional direct air capture projects. The bill also authorizes the Interior Department to permit geologic carbon sequestration on the outer Continental Shelf.

Hydrogen is also a major focus of the legislation, with \$8 billion authorized for the establishment of clean hydrogen programs at DOE, as well as \$500 million for a clean hydrogen manufacturing and recycling program. Another \$1 billion would fund a demonstration, commercialization and deployment program intended to decrease the cost of clean hydrogen production from electrolyzers.

### ***Energy Efficiency***

The IIJA funds a number of initiatives to increase industrial energy efficiency. The bill directs DOE to provide technical assessments for manufacturers to, among other goals, maximize energy and water efficiency. And \$550 million is provided for university-based industrial research and assessment centers to help industrial facilities optimize energy efficiency. A related grant program would help small- and medium-sized manufacturers make efficiency upgrades.

### ***Transportation Electrification***

Electric vehicles (EVs) will receive a huge boost under the IIJA, with \$7.5 billion in funding to support the construction of alternative fuel corridors and to build out a national EV charging infrastructure network. The bill emphasizes deployment in rural, disadvantaged and hard-to-reach communities. Other provisions in the bill (incorporated as part of the Energy Infrastructure Act) require a DOE study on the “cradle to grave” environmental impacts of EVs as well as a DOE / State Department study on the impact of forced labor in China on the EV supply chain.

The IIJA bill allocates an additional \$7.5 billion to support further decarbonization of the transportation sector, with \$5 billion of that targeting the replacement of existing school buses with zero emission and clean school buses. The remaining \$2.5 billion will go toward low-carbon ferries, in addition to funding to help states fund the operations of rural ferries.

### ***Environmental Initiatives***

The IIJA authorizes a new \$15 million per year Environmental Protection Agency (EPA) grant program to educate households and consumers about their residential and community recycling program, aiming to support local recycling infrastructure and decrease contamination in the recycling stream. An additional \$200 million would be allocated to NOAA’s Marine Debris Program.

Additionally, the bill authorizes approximately \$4.7 billion for programs to plug, remediate and reclaim orphaned wells on federal, state and Tribal lands; \$1.5 billion for Brownfields investments; and \$3.5 billion for clean-up and remediation at Superfund sites.

### **DOMESTIC PROCUREMENT**

The bill also includes new statutory authorities to broaden the application of various domestic content preferences in infrastructure assistance and direct federal procurement. These include:

- *Build America, Buy America*: Requires new Buy America preferences for iron, steel, construction materials and manufactured products on federal infrastructure assistance awards.
- *Make It in America*: Amends the Buy American Act (BAA) to improve and tighten waiver processes, codify a newly-established Made in America Office within the Office of Management and Budget and paves the way for the Administration's proposed increase to the BAA's domestic content requirements for direct federal procurement.
- *BuyAmerica.gov*: Directs the establishment of a central and publicly available website related to Buy American waivers.

We will issue a separate advisory taking a deeper look at the IIJA's potentially sweeping Buy American mandates.

## OFFSETS

The measure includes provisions to offset some of the new spending, such as:

- extending certain highway taxes;
- rescinding certain unobligated Covid-relief funds;
- delay the Trump-era Medicare Part D rebate rule;
- reinstating the long-expired Superfund tax (a per ton excise tax on the sale of approximately 40 chemicals);
- extending the annual sequestration of mandatory funding;
- selling oil from the Strategic Petroleum Reserve;
- selling federal spectrum assets;
- requiring transactions of digital assets such as cryptocurrency to be reported to the IRS; and
- extending for five years the pension funding relief provision included in the *American Rescue Plan Act* enacted earlier this year.

Lawmakers also attributed approximately \$56 billion to an estimated 33 percent return on investment in the bill's long-term infrastructure projects. Overall, the non-partisan Congressional Budget Office (CBO) estimates the new law would add \$256 billion to projected deficits over a ten-year period.

Please [join us for a webinar on November 19th](#), where we will be discussing the IIJA and it's implementation. You can register for the webinar [here](#).