

H.R. 3684: Infrastructure Investment and Jobs Act

By: Katie Caprez

On November 5, the U.S. House of Representatives approved a \$1.2 trillion infrastructure spending bill that will make historic investments in core infrastructure priorities including roads and bridges, rail, transit, ports, airports, the electric grid, and broadband.

The legislation, titled the *Infrastructure Investment and Jobs Act* (“IIJA”), will have major implications for states and municipalities of all sizes, as well as the entities involved in responding to governments’ needs for hard and cyber infrastructure.

Improvements to roadways, ports and mass transit are the focus of the legislation and the majority of the funding is targeted at these traditional hard infrastructure projects. U.S. Senator Rob Portman (R-OH) has championed the massive infrastructure bill and pushed for its passage.

This weekend, Senator Portman noted the massive impact the IIJA will have on Ohio, highlighting the bill’s bridge investment program which will award competitive grants to certain governmental entities to improve the condition of bridges. “This additional federal funding means we are one step closer to a solution for the Brent Spence Bridge,” Portman said.

The Brent Spence Bridge, which connects Cincinnati, Ohio with Covington, Kentucky has one of the busiest trucking routes in the nation. Questions about its safety and long shutdowns for repair have long concerned area residents as well as the business owners responsible for the more than \$400 billion of freight which passes over the bridge every year.

While hard infrastructure priorities like bridge maintenance, port modernization, freight rail, and highway improvements account for a majority of the new spending appropriated by the bill (which totals \$550 billion over five years), a sizable portion is dedicated to the expansion of broadband networks and the improvement of cybersecurity.

The new cybersecurity grant program and record-setting investments in broadband development could be game changing for state and local leaders wishing to modernize and protect their communities in these ways.

The U.S. Senate approved the IIJA in August 2020. Friday’s vote means the infrastructure bill will now move to the desk of President Joe Biden, who has indicated a bill signing ceremony will happen soon. Answers to questions about the billions of dollars in new infrastructure grants and programming are below.

Question: How will the money be distributed?

Answer: The IIJA contains formulaic allocations of funds as well as earmarks and competitive grants. Some categories and sub-categories contain both non-competitive and competitive grants.

- **NON-COMPETITIVE FUNDING ALLOCATION PROCESSES**
 - Formulas dictated by the bill are based on criteria like state population, or, potentially for specific items, users (ex: transit funds potentially determined by ridership)
 - Once the money is directed to the states, the local bureaucrats are able to make the important decisions about which projects deserve the funding.
 - States can also decide to allocate some of the funding to the county or city governments within their state.
- **EARMARKS AND COMPETITIVE GRANT PROCESSES**
 - Earmarks override state plans for how infrastructure funds should be spent. "Earmarks come out of the money that the state was going to get anyway."
 - Localities must compete for Competitive Grants via an application process. The U.S. Department of Transportation's Discretionary Grant Process is officially outlined on their [website](#).
 - Generally, the award of competitive grants can be influenced by advocates who confer with decisionmakers in the Executive Branch about the merits of certain proposals.

Question: Which projects will qualify for funding?

Answer: The bill details specific funding streams for the specific projects included in its provisions. Categories of projects included in the \$550 billion in new spending are below.

- **Roads, Bridges, & major projects: \$110B** — Funds new, dedicated grant program to replace and repair bridges and increases funding for the major project competitive grant programs. Preserves the 90/10 split of federal highway aid to states.
- **Passenger and Freight Rail: \$66B** — Provides targeted funding for the Amtrak National Network for new service and dedicated funding to address repair backlogs. Increases funding for freight rail and safety.
- **Safety and Research: \$11B** — Addresses highway, pedestrian, pipeline, and other safety areas (highway safety accounts for the bulk of this funding).
- **Public Transit: \$39.2B** — Funds nation's transit system repair backlog, which includes buses, rail cars, transit stations, track, signals, and power systems. This allocation also includes money to create new bus routes and increase accessibility to public transit for those with physical mobility challenges.
- **Broadband: \$65B** — Funds grants to states for broadband deployment and other efforts to address access issues in rural areas and low-income communities. Expands eligible private activity bond projects to include broadband infrastructure.
- **Airports: \$25B** — Increases Airport Improvement grant amounts for runways, gates, & taxiways and authorizes a new Airport Terminal Improvement program.
- **Ports and Waterways: \$17.4B** — Provides funding for waterway and coastal infrastructure, inland waterway improvements, port infrastructure, and land ports of entry through the Army Corps, DOT, Coast Guard, the GSA, and DHS.

- **Water Infrastructure: \$54B** — Provides a \$15 billion for lead service line replacement and \$10 billion to address PFAS in water, in addition to other items.
- **Power and Grid: \$65B** — Funds grid reliability and resiliency projects and support for a Grid Development Authority; critical minerals and supply chains for clean energy technology; key technologies like carbon capture, hydrogen, direct air capture, and energy efficiency; and energy demonstration projects from the bipartisan Energy Act of 2020.
- **Resiliency: \$46B** — Funds cybersecurity projects to address critical infrastructure needs, flood mitigation, wildfire, drought, coastal resiliency, waste management, ecosystem restoration, and weatherization.
- **Low-Carbon and Zero-Emission School Buses & Ferries: \$7.5B** — Funds and authorizes the adoption of low-carbon and zero-emission school buses, including through hydrogen, propane, LNG, compressed natural gas, biofuel, and electric technologies. Provides support for a pilot program for low emission ferries and rural ferry systems.
- **Electric Vehicle Charging: \$7.5B** — Funds alternative fuel corridors and a national build out of electric vehicle charging infrastructure. The federal funding will have a particular focus on rural and/or disadvantaged communities.
- **Reconnecting Communities: \$1B** — Provides dedicated funding for planning, design, demolition, and reconstruction of street grids, parks, or other infrastructure (funding is especially targeted at infrastructure which is deteriorating due to age).
- **Addressing Legacy Pollution: \$21B** — Funds to clean up brownfield and superfund sites, reclaim abandoned mine lands, and plug orphan oil and gas wells, improving public health and creating good-paying jobs.

For answers to additional questions, or for more information about any of the above, please contact any of the listed professionals. Municipal leaders with questions specific to broadband infrastructure may contact Sherri Warner at SWarner@ralaw.com.

Lewis Adkins, Jr.

Practice Group Manager
Public Law, Regulatory and Finance
216.615.4842 | ladkins@ralaw.com

Katie Caprez

614.723.2038 | kcaprez@ralaw.com

Jason Dodson

330.849.6631 | jdodson@ralaw.com

Diana Feitl

216.615.4838 | dfeitl@ralaw.com

Galen Schuerlein

216.820.4238 | gschuerlein@ralaw.com

Sherri Warner

614.723.2110 | swarner@ralaw.com

This alert is informational only and should not be construed as legal advice. ©2021 Roetzel & Andress LPA. All rights reserved. For more information, please contact Roetzel's Marketing Department at 330.762.7725