**State by State Analysis of the INVEST in America Act**

**Prepared for the Coalition of Northeastern Governors**

*The attached has been developed to provide a State by State analysis of the House Transportation & Infrastructure Committee's 5-year transportation reauthorization legislation.*

*The summary below looks at numerous policy changes that may be considered relevant by the State as well as a breakdown of funding impacts the legislation will have on the State.*

*This summary is in addition to the broader legislative summary previously sent.*

# New York Summary

## FHWA Policy Highlights

*Below are a handful of highlighted policy changes – for a full list of changes and a summary please see the full report*

- New Funding Programs & Policies do Not Start Until 2022
- **FY 21** -- Allows any highway funds obligated in FY21 to be up to 100 percent Federal share and provides broad eligibility and authority in response to COVID-19
- **NATIONAL HIGHWAY PERFORMANCE PROGRAM** – States must do a cost benefit analysis comparing transit, operational changes to capital expansion before new using NHPP for new capacity.
- **NATIONAL HIGHWAY PERFORMANCE PROGRAM –** States must verify a State of good repair before using NHPP for capacity expansion
- **BRIDGES --** Creates a new minimum bridge investment requirement that ensures States spend no less than 20 percent of their two largest apportioned programs on bridge repair and rehabilitation projects.
- **STP –** Sub-allocation amount increased from 55% to 57% in FY 23 and grows to 60% by FY 25
- **STP –** Sub-allocation now includes considering new population groups (0-5,000; 5,000-50,000; 50,000-200,000; <200,000)
- **STP --** Increases the off-system bridge set-aside to 20 percent of STP funds. A State can receive an exemption from this requirement if it can demonstrate insufficient off-system bridge rehabilitation needs to justify the expenditure

- **TOLLING –** Legislation requires State and local governments to get approval to advance new tolling and/or pricing proposals, this includes efforts to implement congestion pricing. The language does establish the amount of time that DOT has to review and approve these requests.
- **FERRIES –** Increases the Ferry program by 50% ($120,000,000/year)
- **CMAQ -** 3-year limit on operating expenses removed if project shows continued air quality emission reductions
- **INFRA GRANTS –** Eliminates INFRA and merges it with $2.8 billion projects of regional and national significance
- **PLANNING -** State-prepared long-range transportation plans to include strategies to mitigate and reduce climate impacts and a vulnerability assessment of critical transportation assets
- **PERFORMANCE MEASURES –** Requires U.S. DOT to establish new performance measures for greenhouse gas emissions and transportation system access and does not allow States to set regressive safety targets.
- **STREET DESIGN -** Revises roadway design standards to require consideration of all users of the transportation facility, including pedestrians, bicyclists, public transit users

*An amendment offered by the Connecticut delegation related to truck size and weights was withdrawn from consideration during floor debate. The parties agreed to continue discussing the matter moving forward.*

## New Core FHWA Programs

### Climate Program

- Includes a new apportioned program ($8.35b for FY22-25) to support carbon pollution reduction. Gives States broad eligibility to invest in highway, transit, and rail projects, as well as support operating costs, and holds States accountable by measuring their annual progress. Provides benefits for States that make the most progress and requires low-performing States to invest 10 percent of their STP any area funds in additional projects to help reduce carbon pollution.

### Resiliency Program

- Creates a new apportioned program ($6.25b for FY22-25) to fund resilience and emergency evacuation needs. Requires States and metropolitan planning organizations (MPOs) to develop an infrastructure vulnerability assessment to guide investments under the program. Makes resilience a core part of the Federal-aid highway program

## New Annual FHWA Discretionary Programs (States are Eligible Recipients)

- **Projects of National and Regional Significance.** The bill would replace the existing Infrastructure for Rebuilding America (INFRA) discretionary grant freight program with the Projects of National and Regional Significance (PNRS) program Provides more than $9 billion over the life of the bill for large highway, transit, and freight projects that cannot be funded through annual apportionments or other discretionary sources. In general, PNRS grant eligibility would be limited to projects costing $100 million or greater; the minimum grant size would be $25 million. With respect to public transit and freight projects, the projects would be eligible only insofar as they also provide a benefit to public roads or the national highway system, respectively. Of note, the bill would guarantee funding for the PNRS program by funding the grants out of the HTF rather than the General Fund.

- **Electric Vehicle Charging and Hydrogen Fueling Infrastructure Grants.** Provides $350 million per year for grants for electric vehicle charging and hydrogen fueling infrastructure. Focuses funding on designated Alternative Fuel Corridors and projects that demonstrate the most effective emissions reductions.

## New One-Year FHWA Discretionary Programs (States are Eligible Recipients)

- **Rebuild Rural Grants.** Provides $250 million for rural communities to address needs on and off the Federal-aid system. Focuses funding on safety, state of good repair, and access to jobs and services.

- **Active Transportation Connectivity Grants.** Provides $250 million for pedestrian and bicycle networks and spines and related planning, including complete streets planning.

- **Commercial Motor Vehicle Parking Grants.** Provides $250 million to construct and improve truck parking facilities.

## Additional FHWA Discretionary Programs for Regional/Local Governments (States are not eligible recipients)

- **Community Transportation Investment Grants.** Provides $600 million per year for local government applicants. Includes broad eligibility for highway and transit projects, with project evaluation done in a manner that will limit political decision-making.

- **Community Climate Innovation Grants.** Provides $250 million per year to non-State applicants for highway, transit, and rail projects, provided they reduce GHGs.

- **Metro Performance Program.** Provides a total of $750 million over the life of the bill for funding allocations directly to MPOs to carry out projects selected by the MPO. The Secretary selects applicants to be accepted into the program based on their technical capacity to manage Federal funds.

- **Gridlock Reduction Grants.** Provides $250 million, of which half is set aside for freight grants. Grants will be awarded for reducing urban congestion in large metro areas, with an emphasis on operational, technological, and mode shift strategies. ***A State must partner with a municipal government to apply.*** (ONLY Available in FY 22)

## FHWA STATE FUNDING BREAKDOWNS

# New York

## FHWA Estimated Apportionments

FAST ACT Apportionment: $8,890,175,084
INVEST Act Apportionment: $12,105,758,342

Percentage Increase: 36.18%
(FAST ACT vs INVEST ACT)

**Comparative Look at Programs:**

| | NHPP | STP | Highway Safety | Rail/Highway Crossing | CMAQ |
|---|---|---|---|---|---|
| **FY 20 Apportionment** | 968,878,443 | 487,836,077 | 99,317,842 | 6,699,842 | 196,450,213 |
| **INVEST 5yr Avg** | 1,132,331,962 | 581,922,903 | 125,138,158 | 6,699,842 | 227,866,274 |
| **Percentage Increase (FY 20 vs 5yr Avg)** | 16.87% | 19.29% | 26.00% | 0.00% | 15.99% |
| **INVEST TOTAL** | 5,661,659,808 | 2,909,614,516 | 625,690,789 | 33,499,210 | 1,139,331,368 |

| | Metro Planning | Freight Program | Pre-Disaster Mitigation Program | Carbon Pollution Reduction |
|---|---|---|---|---|
| **FY 20 Apportionment** | 26,935,869 | 62,998,269 | N/A | N/A |
| **INVEST 5yr Avg** | 36,770,271 | 70,183,974 | 50,428,872 | 67,295,286 |
| **Percentage Increase (FY 20 vs 5yr Avg)** | 36.51% | 11.41% | | |
| **INVEST TOTAL** | 183,851,353 | 350,919,870 | 252,144,361 | 336,476,428 |

## FTA Policy Highlights

*Below are a handful of highlighted policy changes – for a full list of changes and a summary please see the full report*

- **COVID-19** – Ensures that transit data submitted to NTD from fiscal year 2020 and impacted by COVID-19 will not be used in the calculation of transit formula apportionments for FY 2022
- **FORMULAS** – Replaces the current incentive formula based on passenger miles (squared) divided by operating costs with a formula based on vehicles per hour during peak service in the highest 25 percent of routes by ridership.
- **FORMULAS** – Creates a subgrant, administered through the bus formula grant, that provides an increase in funding for transit agencies with the oldest buses.
- **FORMULAS** - Doubles the urban formula low-income set aside from 3 to 6 percent
- **INNOVATION** – Authorizes mobility on demand and mobility as a service projects, sets Federal match at 70% unless zero emission vehicles are used or service is provided directly by the agency – then match is 90%.
- **INNOVATION** – Prohibits Mobility on Demand and use of Automated vehicles if it replaces or reduces traditional transit services.
- **INNOVATION** – Requires providers of Mobility on Demand/Automated service to develop a workforce/jobs report that is designed to articulate job loss potential from MoD & Automation if .5% of passenger miles from Mobility on Demand or Automation (regardless if Federal funds used)
- **BUY AMERICA** – Bill creates streamlined process for procuring 'passenger vehicles', does not require agencies to certify vehicle through FTA, and effectively eliminates Pre-Award/Post-Delivery audit requirements. Purchasers may satisfy Final Assembly requirement via NHTSA-required Monroney Label (window sticker) which states location of vehicle assembly. Purchasers may satisfy Domestic Content requirement via American Automobile Labeling Act information provided on NHTSA website. Sets guidelines and a "120-day window" for FTA to respond to waiver requests.
- **RURAL** – Allows a State to use 5311 rural formula funds to assist areas that were recently changed to an urban area
- **RURAL** – Revises the rural transit formula to increase the funding attributed to actual transit service
- **BUS GRANTS -** Modifies the competitive bus program to focus on large one-time needs for bus garages, bus stations, and fleet expansions
- **ZERO EMISSION BUS GRANTS** – Requires selections be based on degree of need

## New Annual FTA Discretionary Programs (States are Eligible Recipients/Partners)

- **Multi-Jurisdictional Bus Frequency and Ridership Competitive Grants -** Provides $100 million annually, to increase bus frequency, ridership, and total person throughput by redesigning urban streets and corridors to efficiently move transit vehicles in congested major urban areas. The program is structured to require a partnership between transit agencies and State or local government agencies responsible for roadways.

- **Demonstration grants to support reduced fare transit –** Provides small amount if funding from the FTA research section to create a demonstration grant to provide for a reduced fare for low-income riders to help close transit equity gaps. Requires collaboration with a University Transportation Research Center to study the impacts of these demonstration grants.

# Federal Transit Administration Estimated Apportionments

## New York

FY 20 Apportionment: $1,552,716,390
INVEST Act 5-yr Avg. Apportionment: $2,310,674,758

Percentage Increase: 48.81%
(FY '20 vs 5-year avg)

Total Invest ACT Formula: $11,553,373,789
Apportionment

| FY 21 | FY 22 | FY 23 | FY 24 | FY 25 |
|---|---|---|---|---|
| 2,481,103,363 | 2,212,569,918 | 2,248,682,807 | 2,286,491,829 | 2,324,525,872 |

## RAIL POLICY HIGHLIGHTS

The INVEST Act authorizes $60 billion over five years for rail programs. While this is a significant increase in funding for passenger rail, the funding is not guaranteed. ***Unlike highway and transit dollars that have dedicated funding from the highway trust fund, the rail programs are subject to the annual appropriations process***. ***Since the appropriations process typically doesn't see substantial funding increases, it is unlikely that the INVEST Act funding levels will become reality for the rail programs.***

### Rail Provisions in the Highway Title

Traditionally, freight and passenger rail projects have not been explicitly eligible for highway funding programs. However, the INVEST Act makes significant investments in multimodal grant programs, including adding freight and passenger rail in several new grant programs that receive dedicated funding from the highway trust fund. Specifically, the Projects of National and Regional Significance grants, Community Transportation Investment grants, Community Climate Innovation grants, and the Gridlock Reduction Grant program all allow for passenger and freight projects to be eligible. While this is a very helpful improvement for funding rail projects, all of these programs are competitive, so none of the funding is guaranteed for rail. Notably for passenger rail, an important change to the Congestion Mitigation and Air Quality program also allows highway funds to be used to pay for operating support on transportation networks that improve air quality, including state-supported passenger routes.

### Grants and Loan Programs

The bill authorizes a new passenger rail program and increases funding and broadens existing grant programs. It also makes improvements to the rail loan program.

- **Passenger Rail Improvement, Modernization, and Expansion (PRIME)** – Provides $19 billion over the course of five years, would provide funding for state of good repair, service and rail expansion projects, including high speed rail projects.
  - Forty percent of the funding is reserved for projects on the Northeast Corridor.
  - Multi-state projects, as well as projects that show greenhouse gas reductions and other air quality benefits are given priority.

- **Consolidated Rail Infrastructure and Safety Improvements (CRISI) grants** – a competitive grant program created in the FAST Act to fund a wide variety of passenger and freight rail projects. The INVEST Act drastically increased funding for CRISI to $7 billion over five years, which is a $6 billion increase over the FAST Act. The bill also makes several important changes to the bill to drive more investments to passenger rail projects. Namely, it makes eligible commuter rail transportation improvement projects, which traditionally have not been eligible for rail funding. The bill also reserves 50 percent of the funding for projects over $100 million, which tends to favor passenger and large freight rail projects as opposed to smaller short-line projects.

- **Railroad Rehabilitation and Improvement Financing (RRIF) loan program –** This is the major federal rail loan program and is similar in many respects to TIFIA. However, TIFIA has always been a more attractive loan program because the credit risk premium (insurance that must be paid against possible default) is covered. The bill provides $80 million per year to cover the credit risk premium for RRIF. This provision is intended to make the loan program more effective and user friendly to borrowers.

- **Restoration and Enhancement grants** – Provides $100 million over five years. This program was created in the FAST Act and funded at the same level to support the operation of new or expanded passenger rail service. The program can provide operating costs for several years to help new and expanded service to build a base of riders before transitioning to completely local funds. As an example of the type of project that can be funded, the Department of Transportation recently awarded Connecticut Department of Transportation $4.4 million for two additional weekday trains between New Haven, CT and Springfield, MA.

## Amtrak

The bill authorizes $29.3 billion over five years for Amtrak's National Network ($16.2 billion) and Northeast Corridor ($13.1 billion) tripling the federal investment in Amtrak. In the first two years, the funding levels are slightly higher to mitigate the impacts of the COVID-19 pandemic. For states with state-supported routes, approximately $2 billion out of the National Network funding is authorized to offset costs that Amtrak charges for state-supported routes.

The bill makes several significant policy reforms to Amtrak, including modifying the goals of the program to include providing reliable national intercity passenger rail service now and in the future. The bill also changes the makeup of the Amtrak board to include a board member representing states. These provisions were added because of concerns with Amtrak's commitment to long distance service and a lack of broad representation on the Board.

Several controversial changes to the bill provide Amtrak the ability to improve service. For example, one provision would allow Amtrak to enforce their statutory right of preference over freight rail in the Federal Court. This is an extremely useful tool for Amtrak to ensure more reliable rail service, particularly with freight rail interference and passenger train delays; however, the freight railroads are opposed to the provision. The bill also establishes a process for the Surface Transportation Board to determine whether additional trains unreasonably impair freight transportation and initiate a proceeding to evaluate on the issue. This provision could more easily allow Amtrak to add new service, but again, it is opposed by the freight railroads.

The bill makes important changes to address the transparency of Amtrak's costs to states for their state-supported routes. Specifically, the bill requires the State-Amtrak Intercity Passenger Rail Committee to report on potential improvements to the methodology for determining costs to promote accountability and transparency. It also allows for states and Amtrak to pursue an alternative cost allocation method to facilitate the development of new state-supported routes. These changes are meant to address issues that states have raised with the disparate way that Amtrak charges states.

The bill also requires the Northeast Corridor Commission to submit a strategic development plan that identifies key state-of-good repair, capacity expansion and capital improvement projects planned for the Northeast Corridor. This requirement is part of a long-term interest of Congress in improving Amtrak's relationship with the corridor states and add transparency to its opaque planning process on the corridor.

Finally, the bill makes changes to Amtrak's food and beverage service. The bill requires a working group to develop recommendations and prohibits Amtrak from making changes until after the working group's recommendations. It also requires Amtrak to ensure that all long-distance passengers have access to hot meals and removes language limiting Amtrak's ability to provide food and beverage service due to costs. In a controversial decision, Amtrak removed the dining cars from their long-distance service. These provisions are aimed at improving that service for passengers.

## Rail Safety

The rail safety portion of the bill authorizes funding for grade separation grants and addresses many safety issues that have been raised by the National Transportation Safety Board, labor unions and communities. Many of the provisions are controversial, particularly with the freight railroads.

## Grade Crossing Safety

To address some of the challenges with the grade crossing safety program, the INVEST Act authorizes a new grade crossing separation grant program at $2.5 billion over 5 years. While this program will be welcome news due to the large demand for grade separation projects, it is unlikely to receive significant funding, even if passed into law. Because the program is subject to the annual appropriations process, it will have to compete with all the transportation and housing programs.

## Hazardous Materials

The bill requires DOT to rescind any authorizations for the transportation of LNG and prohibits the Department from issuing a regulation until further safety evaluation is conducted.