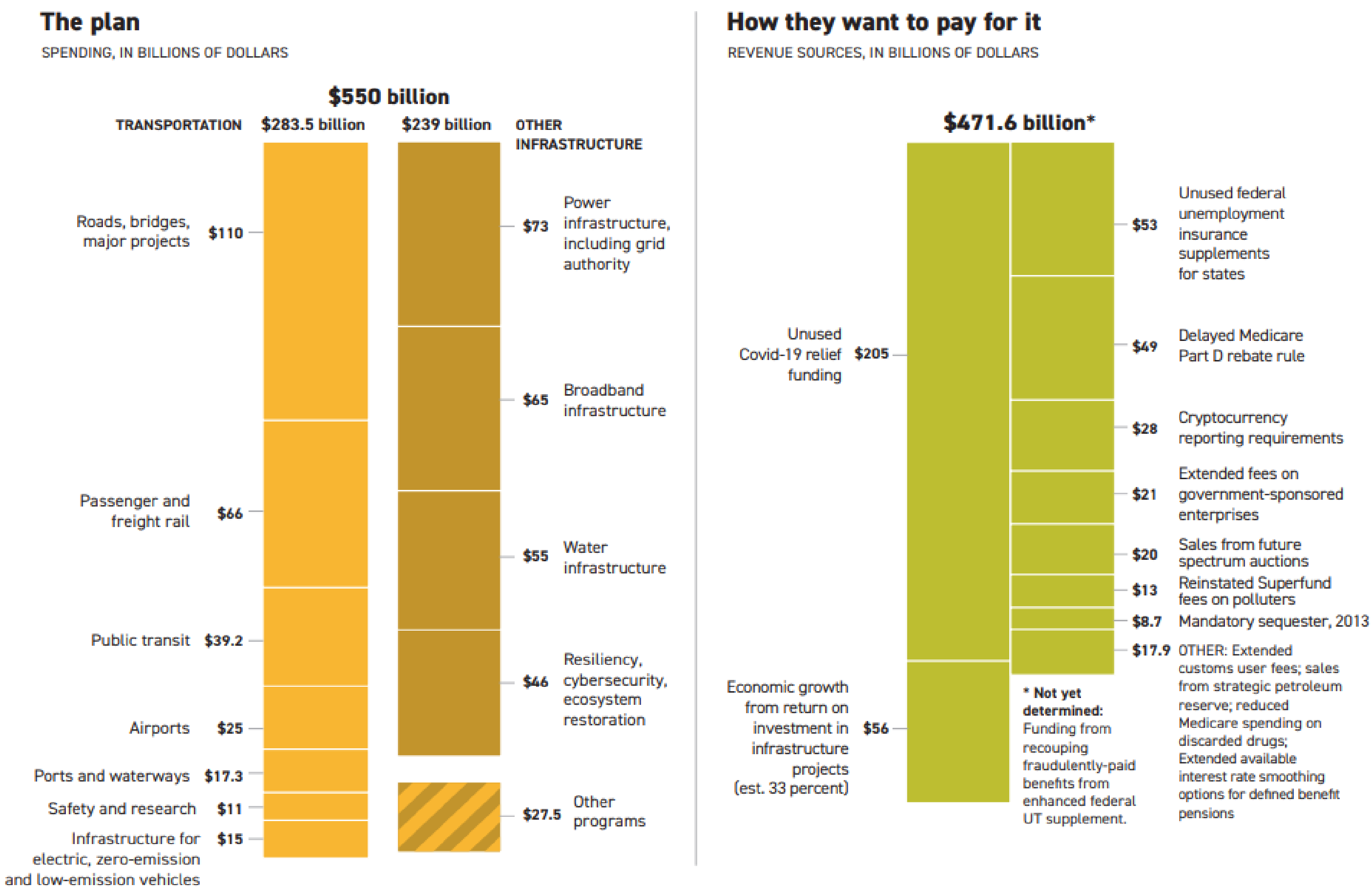
Biden Administration Infrastructure Investment and Jobs Act

After months of deliberations, a bipartisan infrastructure bill has finally made its way through Congress with the US House passing the package originally passed by the US Senate, adding $550 billion over five years to fund improvements in the nation's transportation, water, electric power, and digital infrastructure on top of baseline spending. The bill extends highway, safety, transit, rail, pipeline, and research programs that are traditionally included in five-year surface transportation reauthorizations. It also includes provisions to address climate change, codify parts of a Trump-era policy on environmental reviews, impose domestic content requirements, authorize programs to enhance the electric grid and replace lead pipes, and appropriate $445.9 billion in emergency funds.



*The following is a summary of the notable provisions of the package separated by significant issue areas. For purposes of disclosure, the contents below were sourced from Bloomberg Government. The team at Krieg DeVault LLP is here to help answer additional questions you may have.

HIGHWAYS

Highway Trust Fund: The Highway Trust Fund (HTF), which funds most major highway programs, is estimated to become insolvent starting in fiscal 2022, according to the Congressional Budget Office's February 2021 baseline estimate.

The main source of federal money for the trust fund—the gasoline tax—hasn't increased since 1993, and the measure wouldn't change its rate. Instead, it would transfer $90 billion to the trust fund for highways and $28 billio for mass transit.

Highway Programs: The bill's authorization for the main federal-aid highway programs would be $52.5 billion in fiscal 2022, increasing 2% every year and reaching $56.8 billion in fiscal 2026, from the HTF. The five-year total would be $273.2 billion. The authorization covers state apportionments for federal highway construction, as well as Surface Transportation Block Grants and other programs.

The funding would be provided as contract authority, a type of mandatory spending that allows the Federal Highway Administration (FHWA) to obligate money before appropriations have been provided. Annual appropriations bills provide the liquidating appropriation to pay for what's been obligated.

The measure also would set obligation limits on federal-aid highway and highway safety construction programs, totaling $300.3 billion over the five-year period, limiting the amount of contract authority that can be obligated in a single fiscal year. Some expenses would be exempt from the caps, meaning total spending could be higher.

Bridge Investment: The measure would authorize $3.27 billion over five years from the HTF and $3.27 billion over the same period from the Treasury general fund for new grants to repair and replace bridges.

Tribal, Territorial, & Federal Lands: The bill would authorize the following amounts through 2026, largely from the HTF:

- $3.01 billion for the Tribal Transportation Program.
- $2.19 billion for the Federal Lands Transportation Program.
- $1.5 billion from the Treasury general fund and $275 million from the HTF for Nationally Significant Federal Lands and Tribal Projects.
- $1.49 billion for the Federal Lands Access Program.
- $1.14 billion for the Territorial and Puerto Rico Highway Program.

Additional Funding: The measure would authorize 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 would be 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 measure also would authorize $1 billion over five years from the general fund for grants to connect walking and biking infrastructure.

Climate Change & Alternative Vehicles

Resilience: The bill would set aside $7.3 billion from the main federal-aid highway allocation and authorize an additional $1.4 billion from the HTF from fiscal 2022 through 2026 as part of a new Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT) program, according to a funding table from the Environment and Public Works Committee on identical provisions in its highway bill (S. 1931). The program would fund improvements to make infrastructure more resilient to storms and natural disasters.

The measure would reduce the program's nonfederal cost-sharing requirements for states and other entities that develop resilience improvement plans.

It also would authorize $500 million over five years to establish Transportation Resilience and Adaptation Centers of Excellence to study how to make transportation more resilient to extreme weather and climate change.

Eligibility for several federal-aid highway programs, including the National Highway Performance Program, would be expanded to include transportation resilience and extreme weather mitigation projects.

Carbon Reduction: The measure would allocate $6.42 billion over five years from federal-aid highway funds for a new program to reduce transportation-related carbon emissions, according to the funding table. Eligible projects would include truck stop electrification systems, trail facilities for pedestrians and bicyclists, congestion management technologies, intelligent transportation system capital improvements, energy-efficient alternatives to street lights, electric vehicle charging infrastructure, and port electrification.

Charging & Refueling: The measure would authorize $2.5 billion over five years for grants for electric vehicle charging stations and alternative fuel infrastructure. Half of the funds would be set aside to install alternative fuel stations and infrastructure in publicly accessible locations, with priority for rural areas, low- and moderateincome neighborhoods, and communities with a low ratio of private parking to households or a high ratio of multiunit dwellings to single-family homes.

Additional Programs: The measure would authorize the following amounts from fiscal 2022 through 2026:

- $500 million from the general fund for a Healthy Streets program to deploy cool pavements and expand tree cover.
- $250 million from the HTF for grants to reduce congestion in the busiest metropolitan areas.
- $250 million from the HTF for grants to reduce truck idling and emissions at port facilities.

Regulatory Processes

The bill would codify elements of the Trump administration's "one federal decision" policy that required agencies to coordinate reviews and authorization decisions for major infrastructure projects. It also set a goal for completing environmental reviews within two years.

Under the bill, the lead agency would develop an environmental review schedule with the project sponsor that would be consistent with an agency average of not more than two years for major projects. It would specify conditions under which the schedule could be modified.

Authorization decisions for construction of a major project would have to be completed within 90 days of the issuance of a record of decision for the project, although the lead agency could extend the deadline in some cases.

The Transportation Department would have to establish a performance accountability system to track each major project.

The department would also have to provide other relevant agencies with a list of categorical exclusions under the National Environmental Policy Act that are applicable to highway projects and that would accelerate project delivery if available to those agencies. The agencies would initiate rulemakings to adopt them.

User Fees

The measure would set aside $50 million over five years from highway research and development funds for a new pilot program to explore the use of a national motor vehicle per-mile user fee to bolster the HTF. The Transportation Department would solicit voluntary participants from across the country and set user fees for passenger motor vehicles, light trucks, and medium- and heavy-duty trucks.

The bill also would set aside $75 million over five years to reauthorize and expand a separate program offering grants to states for pilot projects to test road usage fees and other alternative revenue mechanisms.

Other Provisions

The measure also would:

- Require the FHWA to develop a tool to help transportation authorities identify and respond to cyber incidents.
- Stipulate that at least 10% of the bill's funds have to flow through small businesses owned by socially and economically disadvantaged individuals, though the Transportation Department could waive the requirement.
- Authorize grant recipients for transportation projects to implement a local, geographical, or economic hiring preference for construction workers. Such preferences couldn't be construed to "unduly limit competition."

- Modify eligibility rules for Surface Transportation Block Grants to include wildlife crossing structures, electric vehicle charging infrastructure, intelligent transportation technologies, and projects that facilitate intermodal connections with emerging technologies such as magnetic levitation and Hyperloop.
- Extend eligibility for TIFIA loans to airport projects and economic development projects related to rail stations, among other program changes.
- Make several changes to the INFRA grant program, including directing at least 15% of funds, instead of 10%, toward smaller projects, and establishing set-asides for projects with a higher nonfederal match or that would address certain critical freight needs.
- Require the Transportation Department to provide notice and opportunity for comment before waiving Buy America requirements.
- Direct public entities in public-private partnerships that cost $100 million or more to review the private entity's compliance with the terms of their agreement within three years of when the project opens to traffic.
- Allow the Transportation Department to use alternative contracting methods—such as bundling or design-build contracting—on behalf of federal land management agencies and tribal governments.
- Authorize $1 billion through fiscal 2026 for the Appalachian Regional Commission, which funds economic development projects.
- Reauthorize the State Infrastructure Bank Program through fiscal 2026.
- Direct the Transportation Department, in coordination with state transportation agencies, to carry out a study to determine the direct costs of highway use by various types of users. The Transportation and Treasury departments would have to submit recommendations to Congress on revenue options to fully recover those costs, including changes to existing revenue streams and new ones based on user fees.

Emergency Appropriations

The measure also would provide $47.3 billion in supplemental emergency appropriations for highway infrastructure programs from the general fund. Amounts would be provided from fiscal 2022 through 2026, including totals of:

- $27.5 billion to repair and replace bridges and a separate $9.24 billion for the Bridge Investment Program.
- $5 billion for states to deploy electric vehicle charging infrastructure and a data-sharing network. The measure would establish a joint office for the Energy and Transportation departments to coordinate their work on EV infrastructure, which would include new installation and interoperability standards.
- $3.2 billion for renamed Nationally Significant Multimodal Freight and Highway Projects, currently referred to as INFRA grants.
- $1.25 billion for the Appalachian Development Highway System.
- $500 million for a pilot program to remove transportation barriers in communities.

PUBLIC TRANSIT

The Federal Transit Administration (FTA) programs that the bill would reauthorize feature a mix of formula programs that receive money from the Mass Transit Account of the Highway Trust Fund and programs covered by the general fund of the Treasury.

Trust Fund Programs

The measure includes $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, compared with $10.2 billion for fiscal 2021 under the one-year extension of the FAST Act (Public Law 114-94).

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.
- $2.34 billion for low- or zero-emission bus grants. At least 5% would be used for training workers to use the buses.
- $1.94 billion for improving transit services for seniors and individuals with disabilities in urbanized and rural areas.

Capital Investment Grants

The measure would authorize a total of $15 billion from the general fund over five years for Capital Investment Grants for fixed guideway projects such as rapid and commuter rail, streetcars, bus rapid transit, and ferries.

The bill would increase the federal cost cap for small starts projects to $150 million, from $100 million, and the limit on total capital costs to $400 million, from $300 million.

Other Provisions

WMATA: The measure would authorize a total of $1.35 billion from fiscal 2022 through 2030 for the Washington Metropolitan Area Transit Authority, while requiring changes to its Office of Inspector General, including independent hiring and budget authority.

Housing: The measure would require housing, and the connection between housing and employment, to be considered as part of metropolitan planning processes.

Emergency Appropriations

The measure also would provide supplemental emergency appropriations over five years for public transit programs, including:

- $10.3 billion for Transit Infrastructure Grants, with $5.25 billion set aside for low- and zero-emission bus grants, and $4.75 billion for State of Good Repair grants.
- $8 billion for Capital Investment Grants. $1.75 billion to upgrade accessibility at transit stations for people with disabilities.
- $1 billion to provide scheduled ferry transportation service in rural areas.

RAIL

Amtrak Grants

The measure would authorize the following amounts for Amtrak grants from fiscal 2022 through 2026:

- $12.7 billion for National Network grants.
- $6.57 billion for Northeast Corridor grants.

The Transportation Department could withhold as much as 0.5% of appropriated funds for each fiscal year for oversight-related costs. It would also have to withhold as much as $50 million from appropriated funds each year to upgrade Amtrak facilities to ensure compliance with the Americans with Disabilities Act.

Other Rail Grants

The bill also would authorize the following amounts from fiscal 2022 through 2026 for Rail Improvement Grants:

- $7.5 billion for renamed Federal-State Partnership for Intercity Passenger Rail Grants.
- $5 billion for Consolidated Rail Infrastructure and Safety Improvements (CRISI) grants. The department could withhold 10% for project management oversight costs.
- $2.5 billion to eliminate railroad crossings. At least 20% would be allocated to projects in rural areas or on tribal lands. At least 5% of funds would be reserved for projects in counties with 20 or fewer residents per square mile based on the most recent census.

Intercity Passenger Rail: The measure would rename the current Federal-State Partnership for State of Good Repair program and allow funds to be used for projects to expand or establish a new intercity passenger rail service. The Transportation Department would use at least 45% of program funds for projects that are not located along the Northeast Corridor and 45% for projects that are listed on the Northeast Corridor project inventory.

The department would also have to establish a program to develop intercity passenger rail corridors and could withhold as much as 5% of grant funding for it.

Amtrak Policy Changes

Personnel: Amtrak would be required to employ one ticket agent at each station where there was an average of at least 40 passengers per day in fiscal 2017. This would exclude stations where commuter rail ticket agents sell Amtrak tickets.

Contractors: Amtrak couldn't contract out work of furloughed employees who are covered by a collective bargaining agreement and haven't been provided the opportunity to return. The measure wouldn't affect any existing agreement that limits contract work or prevent future agreements allowing it.

Passenger Experience: The measure would also:

- Ban the use of e-cigarettes on trains.
- Remove a limitation that bars food and beverage services unless revenue is sufficient to cover the cost of the service.
- Require Amtrak to establish a working group to provide recommendations to improve its food and beverage service. No employees on long distance or Northeast Corridor routes could be involuntarily separated due to the implementation of any recommendation.

State-Supported Routes: Amtrak would have to enter into an agreement with a state before starting construction on any new state-supported route that outlines how they will share capital and operating costs for the route.

Rural Service: The measure would bar Amtrak from suspending, significantly altering, or reducing the frequency of rail service on any long-distance route in rural communities in any fiscal year it receives federal funds for the route.

The prohibition wouldn't apply in emergencies or cases where construction or maintenance outages affect routes.

It would also require Amtrak to notify Congress 210 days in advance if it plans to discontinue service.

Foreign Freight Car Ban

Freight cars manufactured one year following enactment could only operate in the U.S. if:

- The manufacturer isn't owned or controlled by a foreign government of concern.
- Sensitive technology on the freight car doesn't originate from a state-owned company.
- None of the content of the freight car originates from a country of concern or a company that has violated U.S. intellectual property rights.

The ban would effectively apply to freight cars manufactured by China.

Freight cars couldn't have more than 20% of such content one year after the department issues the new regulations. The maximum would drop to 15% three years after regulations are issued.

Manufacturers could be fined between $100,000 to $250,000 for each freight car that's in violation. The Transportation Department could prohibit repeat violators from providing additional freight cars for operation on the U.S. freight railroad system. Manufacturers would also have to certify that they meet the requirements annually.

Safety and Other Provisions

The Transportation Department would be required to:

- Issue rules requiring passenger and commuter rail carriers to implement inspection plans that comply with regulations, including having adequate emergency lighting.
- Conduct audits of passenger rail operator training, qualification, and certification programs for locomotive engineers and conductors once every five years.
- Issue safety regulations for high-speed rail services in consultation with related experts.
- Expand the data the Federal Railroad Administration collects related to accidents and incidents to include the train length and crew size.
- Require all mechanical employees to take breath or body fluid testing for controlled substances, including pre-employment and random testing.

Railroad Improvement Financing

The measure would codify and amend the Railroad Rehabilitation and Improvement Financing program, which offers loans to finance the development of railroad infrastructure.

It would authorize $250 million over five years to provide credit assistance under the program. It also would authorize $70 million to refund credit risk premiums paid by borrowers.

Emergency Appropriations

The measure also would provide supplemental emergency appropriations for fiscal 2022 through 2026 for rail programs, including:

- $36 billion for the Federal-State Partnership for Intercity Passenger Rail Grants, with as much as $24 billion set aside for the Northeast Corridor.
- $16 billion for Amtrak's National Network and $6 billion for the Northeast Corridor.
- $5 billion for the CRISI program.
- $3 billion to eliminate hazards at railway-highway crossings.

SAFETY

Highway Traffic Safety

The measure would authorize about $6.9 billion over five years for the National Highway Traffic Safety Administration (NHTSA) and related driver safety programs.

Total authorized funding from fiscal 2022 through 2026 would include the following amounts from the Highway Trust Fund:

- $1.89 billion for highway safety programs.
- $1.76 billion for national priority safety programs.
- $970 million for highway safety research and development.
- $205.8 million for NHTSA administrative expenses.

The bill would require states to include in their highway safety programs efforts to:

- Encourage widespread and correct use of child restraints.
- Reduce crashes caused by misuse or misunderstanding of new vehicle technology.
- Provide information relating to child heatstroke death in vehicles.
- Reduce injury caused by drivers not moving over for stopped service vehicles.
- Educate drivers about the risks associated with marijuana-impaired driving.

The measure would also:

- Allow states to use highway safety funds to operate automated traffic enforcement systems in a work or school zone.
- Require states to submit highway safety plans at least once every three years beginning in fiscal 2022.
- Mandate states submit annual grant applications demonstrating their alignment with their approved highway safety plans.

New Grant Programs: The measure would authorize $200 million annually from fiscal 2022 through 2026 for a "Safe Streets and Roads for All" program that would make competitive grants for state projects that significantly reduce or eliminate transportation-related fatalities. The federal share of such a project couldn't exceed 80%.

It would also authorize $150 million annually from fiscal 2022 through 2026 for the department to establish a grant program to modernize state data collection systems.

Vehicle Safety

The measure would authorize $1.04 billion for motor vehicle safety from fiscal 2022 through 2026.

The bill would require the Transportation Department to issue rules that:

- Require manufacturers to install automatic shutoff systems in vehicles with keyless ignitions.
- Establish a performance standard for crash avoidance technology.
- Require new passenger motor vehicles to have forward collision warning, automatic braking, lane departure warning, and lane keeping assist systems.
- Provide performance standards for vehicle headlamp systems and allow for adaptive driving beam headlamps.
- Require new passenger motor vehicles to have advanced drunk and impaired driving prevention technology.
- Require new passenger vehicles have alerts to remind drivers to check the rear-passenger seats for passengers—especially children—after the vehicle is turned off.

It would also require the Transportation Department to cooperate as much as practicable with foreign governments, nongovernmental groups, the motor vehicle industry, and consumer groups on harmonizing vehicle regulations.

Motor Carrier Safety

The measure would authorize $4.46 billion over five years from the Highway Trust Fund for the Federal Motor Carrier Safety Administration and related programs covering commercial drivers and vehicles. That would include:

- $2.03 billion for the Motor Carrier Safety Assistance Program.
- $1.88 billion for FMCSA administrative expenses.
- $300 million for the High Priority Program for motor carrier safety projects.

Human Trafficking: The measure would amend the High Priority Program to include projects that address human trafficking in a commercial motor vehicle or by any driver or passenger.

New Grant Programs: The measure would direct the Transportation Department to establish:

A grant program for states to immobilize or impound passenger-carrying commercial motor vehicles that are unsafe or fail inspection. States could also use funds to conduct safety inspections of those vehicles. A commercial motor vehicle enforcement training and support grant program.

Apprenticeship Pilot Program: The measure would direct the Transportation Department to establish a driver pilot program allowing apprentices younger than 21 to drive commercial motor vehicles, with probationary periods and other restrictions. It would be limited to 3,000 apprentices at any one time and conclude in 3 years.

Limousines: The measure would:

- Require limousines to have lap and shoulder belts for each designated seating position and to meet minimum safety standards for seat strength. The rules would apply to limo manufacturers modifying used vehicles.
- Create a limousine crashworthiness safety standard within four years of the bill's enactment and a limo evacuation safety standard within two years of enactment after feasibility studies.
- Prohibit limousine operators from introducing a vehicle into interstate commerce without displaying the most recent state and federal inspection dates and their results.

Other Regulatory Changes: The measure would direct the Transportation Department to conduct rulemakings to:

- Issue a new safety standard requiring new commercial motor vehicles to have automatic emergency braking systems and require the system's use when the vehicle is in operation within two years of the bill's enactment.
- Require trailers and semitrailers to have rear impact guards that prevent passenger compartment intrusion within one year of the bill's enactment.
- Mandate, if feasible, side and rear underride guards on trailers or semitrailers within one year of the bill's enactment.
- Provide an exemption to maximum driving times for drivers transporting livestock within a 150-mile radius.
- Stipulate that restricted commercial driver's licenses issued to farm-related workers be limited to the applicable seasons.

Hazardous Materials

The measure would authorize $345 million over five years for the Pipeline and Hazardous Materials Safety Administration's hazardous material safety programs. It also would reauthorize spending from the Hazardous Materials Emergency Preparedness Fund for the same period.

The measure would formally authorize the agency's Assistance for Local Emergency Response Training (ALERT) grant program, which offers training materials for emergency responders on the transportation of hazardous materials.

Emergency Appropriations

The measure also would provide supplemental emergency appropriations over five years for safety programs, including:

- $5 billion for grants to implement "Vision Zero" plans to prevent transportation-related fatalities and serious injuries.
- $1 billion for the Pipeline and Hazardous Materials Safety Administration to upgrade natural gas distribution pipelines.
- $750 million for NHTSA crash data and $548 million for its vehicle safety and behavioral research programs.
- $622.5 million for FMCSA motor carrier safety grants.

RESEARCH & INNOVATION

ARPA-I: An "Advanced Research Projects Agency-Infrastructure" would be established within the Transportation Department. It would support research projects that develop innovative solutions to reduce long-term costs of infrastructure development, mitigate transportation's lifecycle effects on the environment, such as to greenhouse gas emissions, and promote resilience from physical and cyber threats.

The measure would authorize "such sums as are necessary" for ARPA-I. The agency's budget request and appropriations would be separate from the rest of the Transportation Department. Funds couldn't be used build a new facility for five years after the bill's enactment.

Smart Transportation: The measure would authorize a total of $500 million over for five years for the Strengthening Mobility and Revolutionizing Transportation (SMART) Grant Program that would support demonstration projects on smart technologies that improve transportation efficiency and safety, such as autonomous vehicles and smart grids to support electric vehicles.

Permits & Environmental Reviews: The measure would establish a center within the Transportation Department to improve interagency coordination and expedite projects related to permits and environmental reviews for major transportation infrastructure projects. The center could also provide technical assistance for compliance with the National Environmental Policy Act.

Drug-Related Research: The Transportation Department, in consultation with federal agencies, state highway safety offices, state toxicologists, and other stakeholders, would have to submit a report to Congress with recommendations to address the barriers states face in submitting alcohol and drug toxicology results to the Fatality Analysis Reporting System, which provides nationwide data on fatal injuries related to motor vehicle crashes. The report also would have to outline how the National Highway Traffic Safety Administration would support states in improving toxicology testing and reporting of results.

The department also would have to submit to Congress and make publicly available on its website a report with recommendations on establishing a national clearinghouse to collect and share samples of marijuana for research related to marijuana-impaired driving.

Travel and Tourism: The measure would establish a chief travel and tourism officer within the Transportation Department. The officer would implement a strategy for the department and other agencies to use infrastructure investments to support the travel and tourism industry during the Covid-19 pandemic.

AVIATION

Emergency Appropriations

The measure also would provide supplemental emergency appropriations for aviation programs for fiscal 2022 through 2026, including:

- $15 billion in formula funding for Airport Improvement Program projects.
- $5 billion for airport terminal development projects.
- $5 billion for Federal Aviation Administration facilities and equipment, including FAA-owned contract towers.

MULTIMODAL & FREIGHT PROGRAMS

National & Local Infrastructure: The measure would authorize the following amounts for fiscal 2022 through 2026:

- $10 billion for grants supporting infrastructure projects with national or regional significance, including highway and bridges on national freight networks, freight rail projects with public benefits, railway-highway grade elimination, intercity passenger rail, and certain public transit projects. Lawmakers could pass a joint resolution blocking funds for selected projects.
- $7.5 billion for projects with local or regional significance, including highways, bridges, public transit, passenger rail, port infrastructure, parts of airport projects, and culvert replacement.

Culvert Replacement: The measure would authorize $4 billion from fiscal 2022 through 2026 for grants to remove culverts that impede the passage of fish swimming upstream.

Other Provisions: The measure also would:

- Establish and authorize "such sums as are necessary" for an Office of Multimodal Freight Infrastructure and Policy at the Transportation Department, headed by a presidentially appointed assistant secretary.
- Increase how much mileage states can propose adding to the national multimodal freight network established under the FAST Act. Each state could propose as much as 30% of the total mileage designated by the Transportation Department for the state, instead of 20%.
- Expand the national freight strategic plan established by the Transportation Department under the FAST Act to consider how the national freight system affects the environment and underserved communities, and how it's affected by e-commerce.

Emergency Appropriations: The measure also would provide supplemental emergency appropriations for multimodal transportation projects over five years, including:

- $12.5 billion for Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary surface transportation grants, referred to in the bill as National Infrastructure Investments. That would include $7.5 billion for projects with significant local or regional effects and $5 billion for multimodal projects of national or regional significance.
- $1 billion for grants to remove culverts that impede the passage of fish swimming upstream.

WATER INFRASTRUCTURE

Drinking Water

State Revolving Funds: The bill would authorize $14.7 billion from fiscal 2022 through 2026 for the Environmental Protection Agency's Drinking Water State Revolving Fund program, which provides capitalization grants to states for loans supporting water infrastructure projects.

The measure would require at least 12% of such funding to be used to subsidize loans to disadvantaged communities, increased from 6% under current law, if there are enough applications for loans to those communities.

The measure also would permanently extend a requirement, set to expire in fiscal 2023, that projects funded through the Drinking Water SRF use only U.S.-produced iron and steel.

Lead Reduction: The bill would extend an EPA grant program to support replacement of lead water lines by five years, through fiscal 2026, and increase the annual authorization to $100 million, from $60 million.

The measure would authorize $200 million over five years to address lead contamination in school drinking water, including through testing and remediation.

Small and Disadvantaged Communities: The bill would extend the authorization for compliance assistance grants to public water systems in small and disadvantaged communities through fiscal 2026. The bill would authorize $70 million in fiscal 2022, increasing to $140 million by fiscal 2026.

The measure would authorize $50 million annually through fiscal 2026 for a pilot program to award competitive grants to states to implement improvements to water systems, with priority for states with a high proportion of underserved communities.

Leak Detection and Repair: The measure would authorize $50 million annually through 2026 for grants for leak detection, repair, and monitoring in small public and nonprofit water systems.

An additional $50 million per year would be authorized for larger systems for infrastructure resilience and sustainability. Half the funds would go to systems serving populations from 10,000 to 100,000, and half would go to systems serving 100,000 or more.

Clean Water Infrastructure

State Revolving Funds: The measure would authorize $14.7 billion from fiscal 2022 through 2026 for the EPA's Clean Water State Revolving Funds program, which provides capitalization grants to states for loans supporting water quality improvement projects, through fiscal 2026.

Under the bill, states would have to use at least 10% and as much as 30% of the capitalization grants for "additional subsidization," such as loan forgiveness. The minimum would apply only if there are sufficient applications for assistance.

WIFIA: The bill would extend the annual $50 million authorization for the Water Infrastructure Finance and Innovation Act (WIFIA) loan program through fiscal 2026.

The bill also would reduce to one, from two, the number of opinion letters from credit rating agencies required in each application for funding.

Sewer Overflows: The bill would authorize $280 million in each of fiscal 2022 through 2026 for grants to states to support municipal planning and construction of projects to address combined sewer overflows, including systems to notify the public when untreated overflows are released into waterways.

At least 25% of the grant funding in each state would have to be allocated to projects in rural or financially distressed communities, if there are enough eligible project applications, with at least 60% of that allocation dedicated to rural areas.

Research Grants: The bill would authorize $75 million per year through fiscal 2026 for research grants to address water pollution and training at water treatment works. The current $25 million-per-year authorization runs through fiscal 2023. At least $50 million per year would be for grants to nonprofits supporting small, rural, and tribal water treatment operations.

Emergency Appropriations

The measure also would provide $55.4 billion in supplemental emergency appropriations for EPA state and tribal assistance grants, including for capitalization grants through the Clean Water State Revolving Funds and Drinking Water State Revolving Funds. Amounts set aside for specified activities for fiscal 2022 through 2026 would include:

- $15 billion to replace lead service lines.
- $5 billion to support disadvantaged communities affected by emerging contaminants.

- $5 billion for clean and zero-emission school buses.
- $4 billion to address emerging contaminants with a focus on per- and polyfluoroalkyl substances (PFAS).

The measure would also provide $8.3 billion for the Bureau of Reclamation's water and related resources activities, with $3.2 billion set aside for the aging infrastructure account for maintenance of bureau-owned water infrastructure.

ENERGY INFRASTRUCTURE

Electric Grid Security

Resilience Grants: The bill would authorize $5 billion over five years for grants to stakeholders in the electricity generation and distribution sector to supplement their own efforts to improve resiliency to disruptive events including natural disasters.

Half of the grant funding would be awarded by the Energy Department, and the other half would be distributed through states and American Indian tribes that submit distribution plans. A portion of grant funding would have to go to eligible recipients that sell 4 million megawatt hours or less of electricity per year.

Grid Programs: The measure would authorize the following amounts for fiscal 2022 through 2026:

- $5 billion for competitively awarded financial assistance to utilities to demonstrate new approaches to improve grid resilience.
- $3 billion for a program to award grants to match investments in smart grid technologies.
- $1 billion to improve resilience and environmental protection in rural areas.

Transmission Facilitation: The bill would authorize $10 million per year through fiscal 2026, along with as much as $2.5 billion in loans from the Treasury Department, for an Energy Department program to support construction of nonfederal electric transmission lines and other facilities by entering into capacity contracts and offering loans. The department could also participate in the design, operation, and ownership of projects.

Other Grid Provisions: The bill also would:

- Provide an additional $10 billion in borrowing authority available to the Bonneville Power Administration, the federal power marketing administration in the Pacific Northwest.
- Authorize $500 million for state energy conservation planning.
- Require electric utilities to promote use of demand-response and demand flexibility practices to reduce consumption during periods of unusually high demand.
- Direct the Energy Department to consult with states and tribes at least every three years to establish electric transmission corridors of national interest.

Energy Cybersecurity

The measure would authorize the following totals for fiscal 2022 through 2026:

- $250 million for competitive grants, cooperative agreements, and technical assistance to small, municipal, and rural utilities to prevent and respond to cyber threats.

- $250 million to develop cybersecurity applications for the energy sector to identify and mitigate vulnerabilities and advance the security of devices and third-party systems.

The bill would direct FERC to issue rules establishing incentive-based rate treatments for public utilities that invest in advanced cybersecurity technology and participate in threat information-sharing programs.

The measure also includes language similar to House-passed measures that would promote cybersecurity in the electric grid, including:

- H.R. 2931 under which the Energy Department would conduct a program to promote the physical and cyber security of electric utilities.
- H.R. 2928 which would direct the Energy Department to establish a voluntary program to test cybersecurity products and technologies that are used in the bulk power system.

Clean Energy Supply Chains

Batteries: The bill would authorize $3 billion over five years for grants through the Energy Department's Office of Fossil Energy for demonstration projects to process battery materials and for constructing or retrofitting processing facilities.

An additional $3 billion over five years would be authorized for Office of Energy Efficiency and Renewable Energy grants for similar activities related to manufacturing and recycling batteries.

The legislation would also authorize the following totals for fiscal 2022 through 2026:

- $750 million for grants supporting manufacturing and recycling of advanced and low-carbon energy materials and retrofitting industrial facilities to reduce emissions.
- $200 million for a grant program to support research and development of recycling and reuse applications for electric vehicle batteries.

USGS Mineral Mapping: The bill would authorize $320 million over five years for a U.S. Geological Survey initiative to improve mapping of critical minerals by integrating several sources of surface and subsurface mapping and data.

Critical Mineral Extraction & Resource Mapping: The measure would authorize $140 million in fiscal 2022 for the Energy Department, working with an academic partner, to design and build a facility to demonstrate the commercial feasibility of an integrated rare earth element extraction facility and refinery.

The measure would also authorize $320 million over five years for an "Earth Mapping Initiative" that would include information relating to the location of critical mineral resources, mine waste, and geothermal resources, among other things.

Carbon Capture Infrastructure

The bill would authorize $3.5 billion over five years for Energy Department financial support for projects that help develop four regional hubs to capture carbon dioxide from the atmosphere and transport, store, and use it.

The measure would create a "carbon dioxide transportation infrastructure finance and innovation" or CIFIA program to leverage federal funding to make loan guarantees and secured loans supporting large projects for infrastructure to transport carbon dioxide. It would authorize $600 million per year in fiscal 2022 and 2023 and $300 million each year afterward through fiscal 2026.

The measure would direct the Interior Department to adopt rules to allow for leases of offshore areas to be used to inject captured carbon dioxide below the seafloor for long-term sequestration.

Other Fuels Infrastructure

Hydrogen: The bill would authorize $8 billion over five years to support hydrogen fuel production from different sources, use of hydrogen for electricity and industrial processes, and hydrogen fuel transportation. The Energy Department would establish at least four regional clean hydrogen hubs that locate clean hydrogen producers, users, and transport infrastructure near one another.

The measure would also authorize $1 billion over five years for a research, demonstration, and commercialization program aimed at reducing the cost of hydrogen produced from electrolysis to less than $2 per kilogram of hydrogen by 2026.

Nuclear Credit Program: The bill would authorize $6 billion from fiscal 2022 through 2026 for an Energy Department civil nuclear credit program to support reactors projected to cease operations because of economic factors. Credits would be provided for a commitment to generate a specific amount of power over a four-year period. No credits could be issued after Sept. 30, 2031.

Energy Efficiency

Revolving Loan Fund: The bill would authorize $250 million for fiscal 2022 to create an Energy Efficiency Revolving Loan Fund Capitalization Grant Program for states to conduct energy audits and energy upgrades or retrofit projects.

School Improvements: The measure would authorize $500 million over five years for a grant program for schools to make improvements that reduce energy costs, improve health and indoor air quality, or involve renewable energy technologies or alternative fueled vehicles.

Abandoned Mines

The bill would authorize $11.3 billion for the Abandoned Mine Land Reclamation Fund for fiscal 2022, which would be available until expended. The funding would be used to provide grants to states and tribes for reclamation projects.

The measure would reduce abandoned mine reclamation fees to 22.4 cents per ton of coal produced by surface mining, 9.6 cents for underground mining, and 6.4 cents for lignite coal. It would extend the fees through until Sept. 30, 2034, from 2021 and distributions from the fund until fiscal 2036.

The measure would also authorize $3 billion to establish a program in the Interior Department to remediate abandoned hardrock mines and address hazardous substance releases. Half of the funds would be for grants to States and tribes and half would be for Interior Department activities on federal land.

Other Authorizations

The measure would increase authorizations for existing Energy Department research and demonstration projects, including:

- $3.21 billion over six years for advanced nuclear reactor demonstrations.
- $2.54 billion over four years for demonstration projects related to carbon capture at coal- and natural gas-fired operations, and an additional $937 million over four years for large-scale carbon capture pilot projects.
- $600 million over four years to develop alternatives to critical minerals and their sources, including through recycling.

Western Water: The bill would authorize $3.2 billion for aging infrastructure rehabilitation, of which $100 million would be reserved for Bureau of Reclamation facilities that have suffered critical failures. It would also authorize $1.2 billion for water storage and conveyance projects, $1 billion for rural water projects authorized before July 1, $1 billion for water recycling and reuse initiatives, and $500 million for dam safety.

Wildfire Mitigation: The measure would authorize $3.37 billion from fiscal 2022 through 2026 for wildfire risk reduction, including to use National Oceanic and Atmospheric Administration satellites; acquire radio equipment; remove flammable vegetation; and provide financial assistance to states, local governments, and tribes for wildfire mitigation activities.

Ecosystem Restoration: The Interior and Agriculture departments would be authorized to receive $2.13 billion over five years for ecosystem restoration activities.

Energy Department Loans: The measure would allow loans for projects that increase domestic production of critical minerals under the Energy Department's Innovative Energy Loan Guarantee Program. It also would expand the list vehicles eligible for loans under the Advanced Technology Vehicle Manufacturing Program, including medium and heavy duty vehicles, aircraft, and hyperloop technology.

The bill would also provide loan guarantees for some natural gas transportation projects in Alaska.

Use of Covid-19 Funds: The measure would allow states to use Covid-19 fiscal recovery funds to satisfy nonfederal matching requirements for Bureau of Reclamation water projects.

Prevailing Wage Requirements: The measure includes language to require all workers on projects funded under the bill's energy division to be paid locally prevailing wages.

Emergency Appropriations

The measure also would provide supplemental emergency appropriations for Energy Department programs for fiscal 2022 through 2026, including:

- $21.5 billion for the department's Office of Clean Energy Demonstrations, with $8 billion set aside for regional clean hydrogen hubs and $5 billion for electric grid grants.
- $16.3 billion for energy efficiency and renewable energy activities, with funds set aside each for battery grants and other programs that the measure would authorize.
- $8.1 billion for the department's Office of Electricity, with $5 billion set aside for grants to prevent outages and enhance electric grid resilience.
- $7.5 billion for the Office of Fossil Energy and Carbon Management, with $3.5 billion set aside to develop regional direct air capture hubs.
- $6 billion to carry out the Civil Nuclear Credit Program.

Emergency funding for Interior Department programs would include:

- $11.3 billion for the Abandoned Mine Reclamation Fund.
- $4.68 billion to carry out orphaned well site plugging and restoration.

BROADBAND

Connectivity Grants: The bill would authorize $42.5 billion for a Broadband Equity, Access, and Deployment Program within the Commerce Department that would provide grants to increase connectivity to underserved and high-cost areas.

The measure would provide a minimum of $100 million to each state, Washington, D.C., and certain territories. Remaining funds would be allocated using a formula based on the number of underserved or high-cost areas within a potential grantee's jurisdiction relative to the number across the U.S.

Grantees could provide sub-grants for service projects, connecting "anchor institutions" such as a library or school, providing internet-capable devices, or other projects that further the goal of increasing connectivity. Recipients would generally be required to provide a 25% match, which could be reduced or waived and could come from Covid-19 relief funds, among other sources.

Digital Equity Grants: The measure includes several programs to increase "digital equity" to ensure that communities and populations "have the information technology capacity that is needed for full participation in the society and economy of the United States." It also would call for "digital inclusion" that ensures access to and use of affordable and reliable fixed and wireless broadband and internet-connected devices with awareness of privacy and cybersecurity, as well as digital literacy that includes knowledge of how to find, evaluate, and create content.

It would create a State Digital Equity Capacity Grant Program and authorize:

- $60 million for grants to states to develop digital equity plans.
- $1.44 billion from 2022 through 2026 for capacity grants to states to implement their plans.

The measure would also authorize $1.25 billion over five years for a Digital Equity Competitive Grant Program to support state, local, and tribal governments, as well as nonprofits or private entities that aren't responsible for carrying out the state program.

The measure would authorize such sums as necessary for the five years after the initial authorization for the initiatives.

'Middle Mile' Grants: The measure would authorize $1 billion over five years for grants to support the construction, improvement, or acquisition of "middle-mile" projects that connect network infrastructure to limit single points of failure. Middle mile refers to utility connections that don't link a producer or service provider to an end-user.

Affordable Internet Program: The measure would direct the Federal Communications Commission to issue rules to extend the emergency broadband benefit enacted under the fiscal 2021 omnibus spending law (Public Law 116-260). Under the measure, a purchaser could apply the benefit to any internet service.

Digital Discrimination: The FCC would have to adopt rules to facilitate equal access to broadband internet services within two years of the measure's enactment. The rules would bar discrimination based on an area's income level, the predominant race or ethnic groups in an area, and any other factors deemed relevant by the commission.

Emergency Appropriations: The measure would provide supplemental emergency appropriations for broadband programs, including the following amounts over five years:

- $42.5 billion for National Telecommunications and Information Administration (NTIA) grants to states, territories, and the District of Columbia for broadband deployment.

- $14.2 billion for a renamed Affordable Connectivity Program, through which the Federal Communications Commission reimburses broadband service providers for discounts to eligible households. The maximum monthly subsidy would be reduced to $30 from $50.
- $2.75 billion for NTIA grant programs to promote digital inclusion and equity for underserved communities.
- $2 billion for rural broadband loans and grants through the Agriculture Department.
- $2 billion for the Tribal Broadband Connectivity Program.
- $1 billion for NTIA grants to construct “middle-mile” broadband infrastructure.

CYBERSECURITY

Cyber Response and Recovery Fund: The measure would authorize $140 million from fiscal 2022 through 2028, and appropriate $100 million, to create a Cyber Response and Recovery Fund.

The fund would be used to provide grants, technical assistance, and other support to federal, state, local, and tribal entities for significant cybersecurity incidents.

Amounts in the fund, which would include direct appropriations and reimbursements from federal agencies allowed in advance by appropriations measures, would be in addition to other appropriated funding for the Cybersecurity and Infrastructure Security Agency.

Significant Cybersecurity Incidents: The Homeland Security secretary could make a declaration in the event of a significant cyber incident or an imminent incident, or when available resources are insufficient for an effective response.

After making a declaration, the Homeland Security Department would coordinate a response effort with federal agencies, law enforcement, and public and private entities.

A declaration would terminate at the discretion of the department or 120 days after the declaration is made. The secretary could renew the declaration. This authority would expire seven years after the bill’s enactment.

Cybersecurity Grants: The measure would authorize $1 billion from fiscal 2022 through 2025 to create a grant program to help states and tribal governments address cybersecurity threats. DHS could also award grants to multistate or tribal government groups.

Eligible entities would have to develop a cybersecurity plan that would provide details on existing strategies to mitigate risks and enhance information system resilience, among other requirements.

Grant funding would be used to implement or revise plans, pay administrative expenses, or assist with other activities to address imminent cybersecurity threats.

The department would have to allocate 3% of grant funding to tribal governments; 1% to each state, Puerto Rico and Washington, D.C., and 0.25% each for American Samoa, Guan, the Northern Mariana Islands, and the U.S. Virgin Islands. Of the remaining amounts 50% would be split between states based on their overall population and 50% based on their rural population compared to that of other states.

The federal share of the cost of an activity supported by the grant program couldn’t be more than 90% in fiscal 2022, decreasing to 60% in fiscal 2025. The federal share for multi-entity projects would be 100% in fiscal 2022, decreasing to 70% by fiscal 2025. The department could waive the matching requirement for any recipient if an entity demonstrates economic hardship. The department could waive or modify the cost-share requirement for tribal governments if it is in the public interest.

DOMESTIC CONTENT PROVISIONS

Buy America Preference: The bill would require the iron, steel, manufactured products, and construction materials used in infrastructure projects to be produced in the U.S. Cement and aggregates such as stone, sand, and gravel, wouldn't be covered.

The bill would permit waivers to the "Buy America" preference, including if there were insufficient supplies or meeting the requirement would increase costs by more than 25%.

The bill would require publication of any waivers on a publicly available website and require review of waivers every five years for waivers granted 180 days before the legislation's enactment.

Federal Agency Duties: The measure would direct the head of each federal agency to report to Congress and the Office of Management and Budget on all its infrastructure financial assistance programs, applicable domestic content requirements, waivers to those requirements, projects receiving funding, and any projects that aren't meeting requirements.

OMB Documents: The measure would direct OMB to issue:

- Regulations that standardize and simplify Buy American Act compliance, reporting, and enforcement.
- Materials to help with new "Buy America" preferences and reporting requirements under the bill.
- Guidelines for minimizing waivers that could reduce employment or inadvertently use dumped or subsidized foreign goods.

End Product Definition: Within a year of enactment, the Federal Acquisition Regulatory Council would have to amend the definition of "end product manufactured in the United States" to ensure all processes involved in the production occur in the U.S. The bill would express the sense of Congress that the domestic content requirement should generally be 75%, or 60% if there aren't qualifying offers.

New Office: OMB would be directed to establish the "Made in America Office" to enforce compliance with domestic content statutes, review waiver requests, review reciprocal defense agreements with foreign governments, and report the percentage of federal procurements made in the U.S.

Website: The measure would also require the General Services Administration to create a "Buyamerican.gov" website or repurpose an existing one. It would be used to publish all information on waivers or exemptions to Buy American laws, audits, and contract violations. The GSA would have to create a mechanism for collecting information on waiver requests to provide an early notice on the website.

PPE Contract Requirements: Any contracts for personal protective equipment (PPE) awarded by the Homeland Security, Health and Human Services, or Veterans Affairs departments would have to last at least two years and require the products to be made in the U.S., except in limited circumstances.

The bill would also allow the transfer of excess PPE or medical equipment from HHS during a public health emergency and allow for the sale of drugs, vaccines, medical devices, or other supplies from the Strategic National Stockpile.

OTHER PROVISIONS

Clean School Buses and Ferries: The measure would authorize $5 billion over five years for the Environmental Protection Agency to award grants and rebates to replace school buses with zero-emission buses or buses that the EPA certifies reduces emissions and use alternative fuels.

Grant recipients would include state and local government agencies, contractors, or nonprofit school transportation associations. The EPA would prioritize applicants from school districts that serve a high percentage of children from low-income families.

The measure also would authorize the following amounts over five years:

- $1 billion for the Transportation Department to establish a program to provide funding to states to ensure basic essential ferry service in rural areas.
- $250 million for the department to establish a pilot program to provide grants to purchase electric or low-emission ferries.

Minority Businesses: The measure would authorize $550 million over five years for the Commerce Department's Minority Business Development Agency (MBDA) and related activities, including:

- The agency's "MBDA Business Center Program," which would award assistance of at least $250,000 to eligible entities to operate centers that support minority businesses in accessing capital, contracts, and grants and creating jobs. The agency could also establish MBDA Rural Business Centers.
- Grants to nonprofit organizations that have annual budgets less than $1 million and support minority businesses.
- Grants to higher education institutions to develop entrepreneurship curricula.
- A council consisting of members from the government and the private sector to advise the agency on measures to better support such businesses. The council would terminate five years after enactment.

EPA Recycling Programs: The measure would authorize the following amounts for Environmental Protection Agency grant programs:

- $75 million over five years for a new grant program to improve residential and community recycling programs through public outreach. At least 20% of funds would be for low-income communities, rural areas, and American Indian communities. States, local governments, American Indian tribes, Native Hawaiian organizations, and the Hawaiian Home Lands Department would be eligible for the program.
- $15 million in fiscal 2022 for a program to reduce battery waste by increasing accessibility to battery collection locations, developing voluntary labeling guidelines and other materials about recycling batteries, and reducing safety concerns related to improper battery disposal.

Reforestation Activities: The measure would remove a $30 million cap on the amount that can be transferred each year to the Reforestation Trust Fund, which is used to pay for reforestation and other activities to enhance forest health and reduce hazardous fuel loads. Money for the fund comes from tariffs on wood products.

The measure also would direct the Agriculture Department to create a 10-year plan for addressing its backlog of replanting needs on national forest land and would set 2030 as the target year for reducing the national forest reforestation backlog.

Wildfire Commission: The Interior, Agriculture, and Homeland Security departments would have to establish a commission to study and make recommendations regarding federal policies to prevent, mitigate, and suppress wildfires and to rehabilitate land devastated by wildfires. It would terminate 180 days after submitting reports on mitigating and managing wildfires, in addition to a report on aerial wildland firefighting equipment strategy and inventory assessment.

Infrastructure Assets: The Transportation Department would have to establish a program to provide grants to help increase the technical capacity of state and local governments to evaluate partnerships with private sector entities that could assume a greater role in infrastructure-related projects, including through “asset concessions.”

The department would have to ensure that asset concessions—in which private or publicly chartered entities enter into a contract to own, control, or maintain a transportation asset—don’t:

- Prohibit state and local governments from constructing new infrastructure or providing transportation services.
- Result in displacement, job loss, or wage reduction for the existing public workforce.
- Increase costs to households earning less than $400,000 annually, including through taxes, user fees, or tolls.

The measure would authorize the transfer of $20 million each year from fiscal 2022 through 2026 from the general fund of the Treasury to the department to carry out the grant program.

ADDITIONAL EMERGENCY APPROPRIATIONS

Army Corps: The measure would provide $11.6 billion for Army Corps construction, including $2.55 billion for coastal and hurricane-related projects and $2.5 billion for inland waterway projects.

The Corps would receive another $4 billion for operations and maintenance.

FEMA: The measure would provide the following amounts for programs run by the Federal Emergency Management Agency:

- $3.5 billion for the National Flood Insurance Fund for flood mitigation assistance.
- $2.23 billion for federal assistance programs, including $1 billion for grants to help state, local, tribal, and territorial governments upgrade their cybersecurity and critical infrastructure.
- $1 billion for the Disaster Relief Fund to be used for pre-disaster hazard mitigation assistance under FEMA’s renamed Building Resilient Infrastructure and Communities program.

Environment: The EPA’s Hazardous Substance Superfund would receive $3.5 billion from its trust fund and as much as $3.5 billion from general revenues for remedial activities.

The agency also would receive $1.96 billion for environmental programs and management.

Indian Health Service: The measure would provide $3.5 billion for the Indian Health Service.

Border Facilities: The measure would provide $3.42 billion through the General Services Administration to build and repair Customs and Border Protection stations and land ports-of-entry.

Forests and Wildfires: The Agriculture Department’s U.S. Forest Service would receive $2.85 billion for the national forest system and $1.53 billion for state and private forestry. The Interior Department would receive $1.46 billion for wildland fire management.

NOAA: The measure would provide $2.61 billion to the National Oceanic and Atmospheric Administration for grants, mapping and forecasting, and other activities.

MARAD: The measure would provide $2.25 billion for the Maritime Administration's port infrastructure development program.

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.

OFFSETS

Mandatory Sequestration

The measure would extend required cuts to mandatory spending, known as sequestration, for one year, through fiscal 2031.

It also would extend the 2% cap on sequestration from Medicare programs through fiscal 2031, at which point the cap would be increased to 4% for the first six months of the year and decreased to zero for the second half.

Drug Changes

The measure would bar the Health and Human Services Department from implementing or enforcing a November 2020 final rule related to drug rebates before Jan. 1, 2026. The rule generally prohibits plan sponsors under Medicare Part D or pharmacy benefit managers from receiving pharmaceutical manufacturers' rebates.

Beginning on Jan. 1, 2023, the measure also would require drug makers to provide refunds to HHS based on the amount of Medicare Part B single-use drugs that were unused or discarded each quarter. Amounts would be deposited into the Federal Supplementary Medical Insurance Trust Fund.

HHS would conduct periodic audits of the manufacturers and of claims submitted by providers. It could impose civil monetary penalties on drug makers that don't comply with the refund requirement.

Other Provisions

The measure also would:

- Rescind a total of $41.8 billion in unobligated coronavirus relief funds.
- Direct the Energy Department to drawn down and sell a maximum of $6.1 billion in crude oil from the Strategic Petroleum Reserve from fiscal 2028 through 2031.
- Extend guarantee fees to 2032, from 2021, for government-sponsored enterprises.
- Beginning Nov. 30, 2024, direct the Federal Communications Commission to start a system of competitive bidding to grant new licenses for certain spectrum frequencies. The authority would expire seven years after enactment.

The measure also includes a findings section that estimates $53 billion in savings from unused pandemic-related unemployment insurance funds.

REVENUE PROVISIONS

Highway Taxes: The measure would extend several highway-related taxes, including taxes on fuel for buses, alcohol fuels, and aviation fuels, through Sept. 30, 2028. Taxes on the use of motor vehicles weighing at least 55,000 pounds would be extended to Oct. 1, 2029.

Cryptocurrency Reporting: The measure would require brokers to report transactions of digital assets to the Internal Revenue Service (IRS), beginning in 2023.

It also would require businesses to report cryptocurrency transactions of more than $10,000, which is the current threshold for cash transactions subject to IRS reporting requirements.

The cryptocurrency provisions were estimated to generate $28 billion in revenue over 10 years.

Other Provisions: The measure also would:

- Terminate the employee retention credit on Oct. 1. It was established under Public Law 116-136 and was expanded through Dec. 31 under Public Law 117-2.
- Increase the cap on tax-exempt bonds issued to $30 billion, from $15 billion, for certain highway or surface freight transfer facility projects. It also would exempt 75% of bonds issued for qualified broadband projects and carbon dioxide capture facilities from the cap.
- Double the per-ton tax on sales of about 40 chemicals. The taxes would range from $0.44 to $9.74 per ton. Covered chemicals would include acetylene, benzene, butane, ethylene, and methane. Substances with more than 20% of a taxable chemical would be subject to tax, instead of 50%. The taxes would effectively terminate after 2031.
- Extend through Sept. 30, 2031, user fees for certain custom services related to commercial vessels and trucks, as well as passenger and freight rail.
- Extend higher interest rates used to calculate pension fund liabilities, known as "pension smoothing," as well as the phase downs by five years.

CONCLUSION

NEXT STEPS

With the passage of this infrastructure package, the next steps will be for the appropriate federal agencies to begin the planning of executing the provisions in the bill and procuring the activities. The team at Krieg DeVault LLP will be monitoring this closely.

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