

START YOUR ENGINES: SENATE COMMITTEE APPROVES LARGEST HIGHWAY BILL IN HISTORY

Date: 15 August 2019

U.S. Public Policy and Law Alert

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The wheels are officially in motion on major infrastructure legislation in Congress. On July 30, the Senate Environment and Public Works Committee ("EPW") unanimously approved the recently introduced "[America's Transportation Infrastructure Act of 2019](#)" (S. 2302, "ATIA"), which would authorize \$287 billion in surface transportation spending over five years — a 27 percent increase over current funding levels, which would make ATIA the largest highway bill in history. As detailed below, the bill also addresses significant policy issues related to highway safety, accelerating project delivery, and climate change, among others.

With the approval of ATIA, EPW has fired the starting gun in the race to reauthorize surface transportation spending programs before current authority expires in September 2020. The process going forward will involve multiple congressional committees on both sides of the Capitol, as well as the Trump administration. It may also serve as a potential vehicle for broader action on other infrastructure initiatives. Stakeholders with an interest in surface transportation policy should evaluate the impacts of the changes that would be made by ATIA and consider engaging in the debate as the process moves toward the finish line. The K&L Gates infrastructure policy team can help clients develop effective strategies to advance policy priorities.

KEY PROVISIONS OF ATIA

- **Increased highway spending.** Over 90 percent of ATIA's \$287 billion in spending would be distributed to states by formula, mostly through existing programs. The biggest new initiative proposed in the bill is a competitive "Bridge Investment Program" authorized at \$6.6 billion over five years, including \$3.3 billion to be drawn from the Highway Trust Fund. The program creates a new, discretionary multi-year funding process for large (more than \$100 million) bridge repair projects, similar to the New Starts process used by the Federal Transit Administration. The bill also increases funding for the popular Nationally Significant Freight and Highway Projects program (popularly known as "INFRA"), providing \$5.5 billion over five years and increasing funding flexibilities within the program.
- **Streamlined project delivery.** Coinciding with funding increases, the legislation also seeks to streamline project delivery and cut red tape so projects can be completed faster, cheaper, and more efficiently. Specifically, ATIA codifies core elements of the "One Federal Decision" policy for highway projects, including establishing a two-year goal for completion of environmental reviews, a 90-day timeline for related project authorizations, and a single environmental document and record of decision to be signed by all participating agencies. The bill also seeks to reduce paperwork burdens on state transportation

authorities and promotes the incorporation of new technologies into road construction and management to expedite project delivery.

- **Enhancing safety.** Improving safety is another priority of ATIA. In addition to increases in the existing Highway Safety Improvement Program, the bill includes new supplemental safety funding of \$500 million per year for states to support projects that would reduce driver and pedestrian fatalities. The bill also creates a new \$250 million per year grant program to reduce wildlife-vehicle collisions. Additionally, the bill increases the set-aside for pedestrian and biking infrastructure from \$850 million to \$1.2 billion per year and expands Complete Streets and Safe Routes to School programs. New requirements would force areas with high fatality rates for bicyclists and pedestrians to focus investments on improving their safety. The bill also adds an emphasis on pedestrian safety to an existing program to improve safety at at-grade rail crossings, taking federal responsibility for injuries and deaths to "trespassers" on railroad tracks.
- **Addressing climate change.** For the first time in history, the Senate's surface transportation legislation includes an entire title dedicated to addressing climate change — proposing nearly \$10 billion in spending to enhance the environmental sustainability and resilience of the country's transportation system. The largest chunk of this money — \$4.9 billion — would go toward new funding for states to improve infrastructure resilience to natural disasters and extreme weather, including an annual competition for an aggregate \$1 billion in grants. The climate change title also includes a new \$1 billion grant program for electric vehicle charging stations and other alternate-fuel vehicles, funding for projects that reduce idling at port facilities (including the advancement of port electrification), new incentive funding for carbon reduction performance, and a new congestion relief program.
- **Public-private partnerships ("P3s").** Of note to stakeholders with an interest in innovative financing and P3s, ATIA would create new requirements for P3s that use federal funds. For large (over \$100 million) finance-build-operate-maintain projects, the project sponsor would be required to submit a compliance review of the private-sector partner to the Secretary of Transportation. This review would include certification of the private entity's compliance with the terms of the public-private partnership agreement or a notice of any violations. Both would be made public. ATIA also requires P3s that use federal funding or financing through the Transportation Infrastructure Finance and Innovation Act ("TIFIA") to conduct a Value for Money analysis.

Additionally, ATIA would make significant changes to the TIFIA program in terms of eligibility and addressing unobligated and unallocated TIFIA funds left over from the previous surface transportation reauthorization. The bill would not change the core mission and purpose of the program but rather seek to address concerns about low TIFIA deal flow by expanding TIFIA eligibility to three new areas: (1) transit-oriented development near major transit stations; (2) airport projects, not to exceed 15 percent of total TIFIA funding; and (3) acquisition of plant and wildlife areas as a means to mitigate environmental impacts of transportation projects.

THE ROAD AHEAD

EPW's approval of ATIA is the first move in a multi-step process towards surface transportation reauthorization. In the Senate, the Commerce and Banking committees share jurisdiction with EPW and will need to provide input on safety, rail, and transit matters, among others. In addition, the Senate Finance Committee will need to weigh in regarding how ATIA will be funded — a key question given the significant spending increases contemplated by the legislation and the declining purchasing power of the current gas tax (the principal source of financial support for federal highway programs). Meanwhile, in the House of Representatives, leaders of the Transportation and Infrastructure Committee are developing their own version of a surface transportation bill, and the House Ways and Means Committee may reach its own conclusions about funding.

With the current highway bill set to expire in September 2020, the clock is ticking. Consideration of surface transportation reauthorization will likely span many months; however, engagement in the early stages of the policy process is essential to shaping the final outcome. If you have not yet considered the potential opportunities and risks associated with this major infrastructure initiative — including the opportunities that could be created should the legislation's scope expand to resemble the broader infrastructure package that has been under discussion since the early days of the Trump administration — now is the time to engage. The authors of this alert and the broader K&L Gates infrastructure policy team are available to answer any questions and help clients plan their next steps.

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