

# *Senate Bipartisan Infrastructure Investment and Jobs Act*

## Trucking Provisions Summary

On August 10<sup>th</sup>, the U.S. Senate approved the *Bipartisan Infrastructure Investment and Jobs Act*. The legislation provides \$550 billion in new investment in infrastructure, on top of reauthorizing surface transportation programs for five years. Essentially, this package includes the bipartisan highway reauthorization bills passed out of Senate Committees, with an additional \$550 billion in infrastructure spending. Of the \$550 billion in supplemental spending, \$110 billion is dedicated to roads and bridges.

The bill now advances to the House of Representatives where further action is expected this fall.

### **Harmful Trucking Provisions**

- **Sec. 11404 Congestion Relief Program**

Establishes a program to award grants to states, metropolitan planning organizations, cities, or municipalities to implement programs designed to reduce highway congestion. This program would allow for projects to use tolling on the Interstate System, in up to 10 urbanized areas, as part of their congestion reduction strategies. Funding for this program would be provided from the Highway Trust Fund.

- **Sec. 13002 establishes a National Motor Vehicle Per-Mile User Fee Pilot**

In carrying out the pilot program, the Secretary, in coordination with the Secretary of the Treasury, shall provide different methods that volunteer participants can choose from to track motor vehicle miles traveled, solicit volunteer participants from all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, ensure an equitable geographic distribution by population among volunteer participants, and include commercial vehicles and passenger motor vehicles.

Of note, it requires that the Secretary of the Treasury shall establish, on an annual basis, per-mile user fees for passenger motor vehicles, light trucks, and medium- and heavy-duty trucks, which amount may vary between vehicle types and weight classes to reflect estimated impacts on infrastructure, safety, congestion, the environment, or other related social impacts. This is potentially problematic depending on how these factors are calculated.

- **Sec. 23010. Automatic Emergency Braking**

This section would require the Secretary, not later than two years after enactment, to prescribe a motor vehicle safety standard and accompanying performance requirements for automatic emergency braking systems for heavy-duty commercial motor vehicles, and to require that systems installed in such vehicles be in use during operation. This section would also direct the Secretary to study equipping other commercial motor vehicles with an automatic emergency braking system and, if warranted, develop performance standards for such systems.

- **Sec. 23011. Underride Protection**

This section would direct the Secretary, within one year of enactment, to strengthen rear underride guard standards and to conduct additional research on the design and development of rear impact guards to prevent crashes at higher speeds. This section would also require the Secretary, within one year of enactment, to amend regulations on minimum periodic inspection standards and reports to include rear impact guards and rear end protection. The Secretary would also be directed to complete additional research on side underride guards, and, if warranted, develop performance standards for side underride guards. This section also creates an Advisory Committee on Underride Protection.

- **Sec. 23022. Apprenticeship Pilot Program**

Authorizes a three-year pilot program for young drivers (18-20 year olds), improves trainer requirements and authorizes TRB to study the effect driver compensation has on safety and retention. This is a watered-down version of the DRIVE-SAFE Act.

- **Section 71001. Asset Concessions**

- This establishes an “Asset concessions and innovative finance assistance” program. This program would essentially provide grants for public entities to facilitate asset recycling.
- The program would be funded at \$20 million a year over five years (\$100 million total).
- An asset concession is a contract between a public entity (state/local gov’t, public authority, etc.) and a private concessionaire, where the concessionaire provides a payment to the eligible entity and agrees to maintain and operate an infrastructure asset.
- The technical assistance grants could be used to “build the organizational capacity of the public entity to develop, review, or enter into an asset concession,” and solicit “expert services.”
- There are restrictions and requirements for entities receiving the grant, including:
  - The terms of an asset concession shall not result in any increase in costs under the concession being shifted to taxpayers with a household income under \$400,000 per year, including through user fees, tolls, taxes, or any other measure.
  - The eligible entity or the concessionaire shall carry out a value-for-money analysis, or similar assessment, to compare the aggregate costs and benefits to the eligible entity of the asset concession against alternative options to determine whether the asset concession generates additional public benefits and serves the public interest.
  - **BUT There are no restrictions to ensure that the proceeds of an asset concession are directed to the users who will be using the asset under contract or the infrastructure that is part of the concession agreement.**
- The provisions require a report on asset recycling that includes:
  - An analysis of any impediments in applicable laws, regulations, and practices to increased use of public-private partnerships and private investment in transportation improvements; and
  - Proposals for approaches that address those impediments while continuing to protect the public interest and any public investment in transportation improvements.

- **Diversion of Highway Trust Fund Dollars**

There are numerous provisions throughout the EPW title of the infrastructure package that allow for funding from the HTF to be used for non-road purposes:

- **Section 11114** amends the National Highway Freight Program to allow for funds to be used for lock or dam modernization/rehabilitation projects and projects on a marine highway corridor if the project is functionally connected to the National Highway Freight Network and is likely to reduce on-road emissions. Marine highway corridors are rivers and other inland waterways.
- **Section 11109** would allow Surface Transportation Block Grant funds to be used for the planning, designing, engineering, or construction of rural barge landing, dock, and waterfront infrastructure projects.
- **Section 11402** would provide funding from the HTF for a new program to reduce of truck emissions at port facilities.

## **Beneficial Provisions**

- **Sec. 23002. Motor Carrier Safety Advisory Committee**  
This section would revise the Motor Carrier Safety Advisory Committee to include small business motor carriers and extend the committee through September 2025.
- **Sec. 23003. Combating Human Trafficking**  
This section would allow funding to support the recognition, prevention, and reporting of human trafficking as well as the detection of and enforcement of laws relating to such criminal activity.
- **Sec. 23007. Promoting Women in the Trucking Workforce**  
This section would establish the Women of Trucking Advisory Board to identify barriers and industry trends that directly or indirectly discourage women from pursuing and retaining careers in trucking, and examine ways to facilitate support for women pursuing careers in trucking including training and outreach programs.
- **Sec. 23009. Truck Leasing Task Force**  
This section would require the Secretary, in consultation with the Secretary of Labor, to establish a Truck Leasing Task Force. The Task Force shall examine common truck leasing arrangements, including the impact of inequitable leasing agreements on the industry, and resources to assist commercial motor vehicle drivers in assessing the financial impacts of leasing agreements. This section requires the Task Force to submit its findings and recommendations to Congress, as well as the Secretary of Transportation, and the Secretary of Labor.
- **Sec. 23016. National Consumer Complaint Database**  
This section would require GAO to examine the National Consumer Complaint Database of the Federal Motor Carrier Safety Administration, and to evaluate the effectiveness of efforts to consider and follow-up on complaints submitted to the database, the types of complaints, and awareness of the database.
- **Sec. 23017. Electronic Logging Device Oversight**  
This section would require the Secretary to submit a report to Congress on the processes used by the Federal Motor Carrier Safety Administration to review electronic logging device logs and to protect proprietary and personally identifiable information.

## **Other Notable Provisions**

- **Sec. 21104. Improving State freight plans**  
This section would require State freight plans to include supply chain cargo flows, an inventory of commercial ports, findings and recommendations from any multi-State freight compacts, the impacts of e-commerce on freight infrastructure, the considerations of military freight, **and an assessment of truck parking facilities in the State**. The section would also change the frequency with which a State must update its freight plan from every five years to every four years.
- **Sec. 23001. Authorization of appropriations**  
This section would authorize appropriations out of the Highway Trust Fund for administrative expenses of the Federal Motor Carrier Safety Administration, including appropriations to carry out the motor carrier safety assistance program, the high priority program, the commercial motor vehicle

enforcement training and support grant program, the commercial motor vehicle operators grant program, and the financial assistance program for commercial driver's license implementation.

- **Sec. 23005. Commercial Motor Vehicle Enforcement Training and Support**  
This section would establish a grant program to provide discretionary grants for nonprofit organization to provide training to non-Federal employees who conduct commercial motor vehicle enforcement activities and to develop related training materials.
- **Sec. 23006. Study of Commercial Motor Vehicle Crash Causation**  
This section would require the Secretary to carry out a comprehensive study to determine the causes of, and contributing factors to, crashes that involve a commercial motor vehicle, as well as to identify data requirements, data collection procedures, reports, and any other measures that can help improve the ability of States and the Secretary to evaluate future crashes, monitor crash trends, and develop effective safety policies. This section would also require the Secretary to submit a report to Congress describing the results of the study and any legislative recommendations.
- **Section 23018. Transportation of Agricultural Commodities and Farm Supplies**  
Provides a 150 air-mile radius from final destination HOS exemption for drivers transporting livestock.
- **Section 23019. Modification of Restrictions on Certain Commercial Driver's Licenses**  
Restricted commercial driver's license issued to an employee in a farm-related service industry shall be limited to the applicable seasonal periods defined by the State issuing the restricted commercial driver's license, subject to the condition that the total number of days in any calendar year during which the restricted commercial driver's license is valid does not exceed 210.
- **Section 23020. Report on Human Trafficking Violations Involving Commercial Motor Vehicles**  
Requires DOT to coordinate with the AG to report on human trafficking violations involving CMVs, which shall include recommendations for countering human trafficking, including an assessment of previous best practices by transportation stakeholders.
- **Section 23021. Broker Guidance Relating to Federal motor Carrier Safety Regulations**  
Requires DOT to issue guidance to clarify the definitions of the terms "broker" and "bona fide agents" in section 371.2 CFR 49. As part of this guidance, DOT will consider how technology has changed freight brokerage and the role of bona fide agents. The Secretary will also examine the role of a dispatch service and the extent to which dispatch services could be considered brokers or bona fide agents, and clarify the level of financial penalties for unauthorized brokerage activities.
- **Highway Cost Allocation Study (Amendment #2181 Adopted 95-3 via roll call vote)**  
Requires DOT to conduct a study of vehicular highway use. This information would inform decisions to address the Highway Trust Fund's revenue shortfalls during its next reauthorization cycle.

## **Supplemental Appropriations**

In addition to the funding authorizations provided as part of the highway reauthorization bills included in the Bipartisan Infrastructure Investment and Jobs Act, the package also appropriates additional money above and beyond these authorizations.

- \$27.5 billion for a bridge replacement, rehabilitation, preservation, protection, and construction program
- \$5 billion for the deployment of electric vehicle charging infrastructure
- \$400 million for the motor carrier safety assistance program

## **Pay-Fors**

- \$118 billion from the General Fund to bail out the Highway Trust Fund and pay for the 5-year surface reauthorization
- \$205 billion from repurposing of certain unused COVID relief dollars
- Funding from recouping fraudulently-paid benefits from enhanced federal unemployment insurance supplement (awaiting amount)
- \$49 billion from delaying Medicare Part D rebate rule
- \$53 billion from certain states returning unused enhanced federal unemployment insurance supplement
- \$20 billion from sales of future spectrum auctions
- \$67 billion from proceeds of the February 2021 c-band auction
- \$56 billion in economic growth resulting from a 33 percent return on investment in these long-term infrastructure projects
- \$28 billion from applying information reporting requirements to cryptocurrency
- \$21 billion from extending fees on Government Sponsored Entities (Fannie Mae, Freddie Mac, etc.)
- \$13 billion from reinstating certain Superfund fees
- \$8.7 billion from the mandatory sequester
- \$6 billion from extending customs user fees
- \$6 billion in sales from the Strategic Petroleum Reserve
- \$3 billion in savings from reducing Medicare spending on discarded medications from large, single-use vials
- \$2.9 billion from extending available interest rate smoothing options for defined benefit pension plans