FTBA'S OFFICIAL PUBLICATION
Winter 2021

FLORIDA
TRANSPORTATION BUILDER

Infrastructure Funding:
What it Means for Florida Transportation Builders

FDOT Workforce Development Program Update

Florida OSHA Plan Moves Closer to Reality

Understanding Workers' Compensation Insurance through a PEO

Infrastructure Funding:

A Breakdown for Florida Transportation Builders

By Neal I. Sklar, Esquire and Ryan A. Weiss, Esquire
Peckar & Abramson, P.C.

The Infrastructure Investment and Jobs Act ("IIJA") is intended to jumpstart the national effort to modernize the framework that supports almost every conceivable aspect of life in the United States, as well as strengthen the nation's resiliency to extreme weather and climate change by reducing greenhouse gas emissions through repair, upgrade and modernization of the nation's transit infrastructure. It also includes expansion of the transit and rail networks across the country, including Florida.

The legislation seeks to address a broad range of critical needs in the U.S. by creating funding opportunities, including $550 billion in new spending over the next five years, that is to be divided between improving the surface-transportation network and enhancing core infrastructure.[1] In addition to funding opportunities, the bill will introduce regulatory process changes and material standards likely to impact the construction industry.

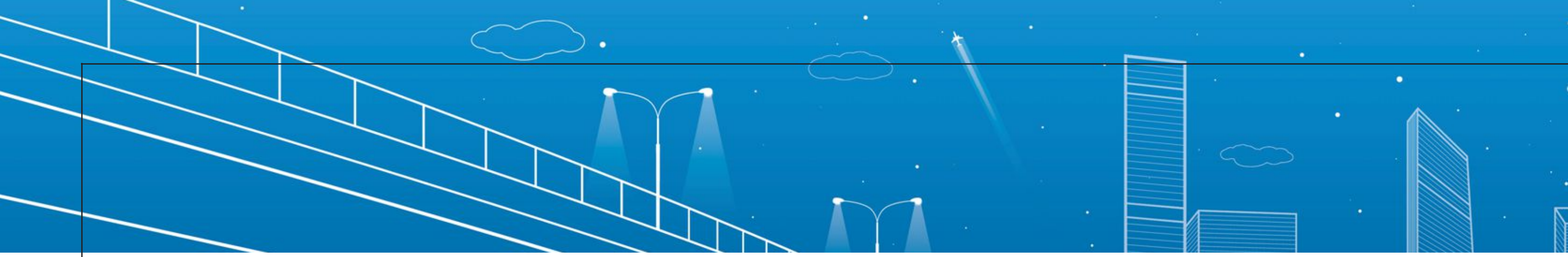
For example, acceptance of IIJA funding can trigger "made-in-America" obligations that include iron, steel and other domestic component requirements for materials implemented on government projects.[2] Builders and suppliers interested in accessing these funds should evaluate their supply chain and manufacturing materials/methods to ensure they have the ability to comply with IIJA's requirements.

Of the $1.2 trillion in funding authorized, some $300 billion in formula grants will be disbursed to states based on various factors (i.e., population size) and will be dedicated to improvements and maintenance of bridges and roadways.[3] For example, IIJA authorizes the use of Highway Trust Fund (HTF) capital for highways, roads and bridges for FY 2022 through FY 2026, apportioned to states through nine federal-aid highway formula programs including two new programs: the Carbon Reduction Program and the Promoting Resilient Operations for Transformative, Efficient, and Cost Saving Transportation (PROTECT) Program.

Investments in Florida Infrastructure Projects

The benefits of such a significant investment in Florida infrastructure cannot be understated since, over the last decade, Floridians have relied on federal funding to support 36 percent of state highway and

PANIMONI/STOCK.ADOBE.COM



bridge capital improvements and 34 percent of transit capital outlays. In that same time, the federal transit investment has supported nearly 100 urban and rural transit agencies throughout Florida.[4]

With the historic migration of individuals entering Florida, the boost to infrastructure funding is needed now more than ever. Since 2011, the commute time for the average Floridian has risen by an average of 11.6%.[5] Aside from the value of lost time, each driver incurs an estimated $425 per year due to driving on deteriorating roadways and bridges throughout the state. Id. According to the White House Fact Sheet (Florida), there are an estimated 408 bridges and over 3,564 miles of highway determined to be in "poor condition" throughout Florida. It should be no surprise that the American Society of Civil Engineers gave Florida a "C" grade on its infrastructure report card.[6]

In an effort to address dilapidated or neglected roadway infrastructure and reduce transit and freight costs, the American Association of State Highway and Transportation Officials (AASHTO) estimates that the IIJA will bring in more than $16.3 billion in transportation funds to Florida.[7] That figure is expected to include an increase of over $600 million annually to Florida's current level of federal formula highway funding. Many of the initiatives envisioned by the federal government for implementation through the IIJA will provide significant opportunities for individuals and companies throughout Florida engaged in the design, development and construction of both public and private transportation infrastructure.

According to global forecasting leader IHS Markit's September 2021 report, the initial outcome of the recently passed legislation will provide Floridians several immediate positive impacts from IIJA-related construction activity, including:

- An additional $3.69 billion in state gross domestic product each year coming from the IIJA's investment to fix Florida's roads and transit system;
- An overall increase to Floridians' disposable income at nearly $1.42 billion per year; and
- An average increase of $650 million per year in state and local tax receipts, representing income that may be reinvested in Florida without any increase in tax rates.

The IIJA also calls for the implementation of the first-ever national network of electric vehicle chargers and charging stations in the U.S., and to provide funds to replace thousands of transit vehicles including buses, with "clean, zero-emission vehicles."[8] Based on the traditional state revolving fund formula used to calculate entitlement to federal funds, Florida is expected to receive $198 million over five years to support the expansion of an EV charging network within its borders. From 2022 to 2026, an additional $2.5 billion in grant funding dedicated to EV charging infrastructure also will be available to states upon application, based on various project-related eligibility requirements.

Promoting Accessibility to Federal Funding and Government Contracts

Many municipalities throughout Florida rely on intergovernmental partners to support efforts to ensure the safety and effectiveness of off-system bridges (those on secondary or local roads) due to these structures' location off the National Highway System.[9] The IIJA also will make changes to the Surface Transportation Block Grant (STBG) that provides funding that may be used by states and localities for projects to preserve and improve conditions and performance on any federal-aid highway, bridge and tunnel projects on public road, pedestrian and bicycle infrastructure and transit capital projects (including intercity bus terminals).

Florida builders should benefit from greater access to federal funds and government contracts by way of new categories of infrastructure-related projects eligible for funding under the IIJA including:

- Installation of electrical vehicle charging infrastructure;
- Installation of measures to protect a transportation facility from cyber threats; and
- Projects to increase tourism, prevent wildlife collisions with vehicles, and resiliency improvements.

Although each state will receive a share of the federal funds based on the current federal funding formula, additional funds will be made available by the IIJA to the extent that state projects can effectively be shown to promote the IIJA's initiatives. For example, the newly formed Carbon Reduction Program contained in the Act will permit the use of federal funds specifically for traffic management, transit systems, bike and pedestrian projects, energy-efficient street lighting, efforts to reduce peak travel, work to cut the environmental impact of hauling freight, and using zero emission vehicles throughout Florida.

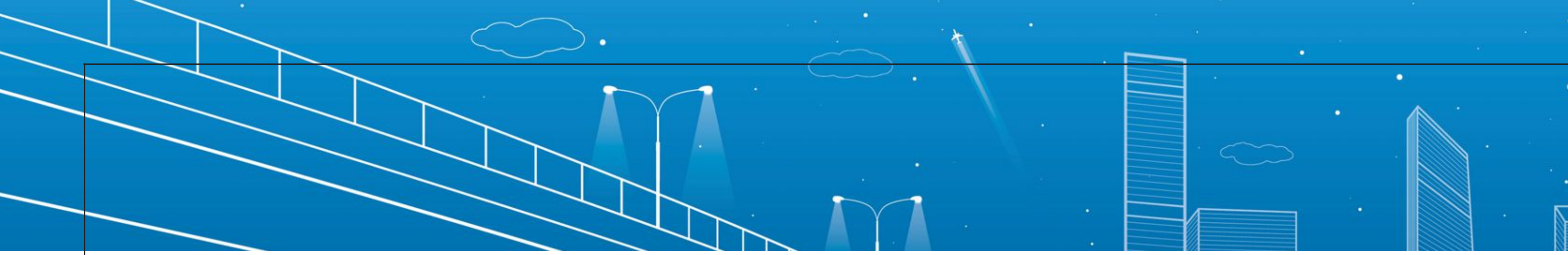
Potential Avenue for Compromise of Competing Interests

Certain aspects of the IIJA may revitalize support for projects previously opposed by environmentalists who pushed to defeat the Multi-Use Corridors of Regional Economic Significance project (M-CORES) during Florida's 2021 legislative session. M-CORES was proposed to create three new toll road systems throughout Florida to reduce congestion points, stimulate economic development in rural communities, and create more hurricane evacuation routes.

For example, the IIJA may provide an opportunity for those on both sides of the M-CORES debate to reach a compromise. One of the more significant aspects of the IIJA includes changes to the STBG, which calls for expedited environmental review processes, with the IIJA requiring federal agencies to schedule their environmental review processes within an average of two years and requiring agencies to complete all federal authorizations for a project within 90 days after issuance of the agency's decision. These changes seek to streamline environmental review procedures for surface transportation projects that receive federal funding or financing or require approval of the U.S. Department of Transportation. To the extent that Floridians remain open to the underlying goals of the M-CORES project, the changes to the STBG may expedite environmental review procedures like those that the M-CORES opposition argued were missing from the original legislation.

Expanded Access to Business Development Resources for Minority-Owned Businesses[10]

The Minority Business Development Agency is the only federal agency solely dedicated to the growth and global competitiveness of minority business enterprises. To further promote diversity and assist Florida's minority entrepreneurs to obtain access to government contracts and capital, the IIJA codifies the MBDA. In addition, the IIJA serves to allocate $110 million in annual funding to the MBDA through 2025, representing more than double the $48 million previously allocated by Congress in 2021. Most of the funds will go to the MBDA Business Center Program, whose programs offer



customized business development and industry-focused services to provide greater access to capital, contracts and markets.

The Orlando MBDA has generated documented growth of minority-owned business enterprises through programs such as: Corporate Supplier Diversity Development, Small and Minority Business Coaching, Community and Public Relations Services, Student Entrepreneur Education Development (SEED) and Women Empowerment Wednesdays (a global initiative). Builders in the transportation industry do not have to reside in Orlando to reach MBDA's services, as satellite offices are located throughout the State, including offices in Jacksonville, Tallahassee, Tampa, Sarasota and Miami.

The IIJA will be a welcome investment in infrastructure throughout Florida impacting each of our diverse counties. Its impact will be transformational by helping to bridge the funding gaps that are needed to accommodate the transportation needs of our ever-growing population.

About the Authors

Neal Sklar is a partner with Peckar & Abramson, where he focuses primarily on the representation of general contractors, construction managers and infrastructure contractors in a variety of construction-related matters. These matters include providing counsel on state and federal government projects as well as Public Private Partnerships (P3s) involving transportation, commercial, heavy and social infrastructure, energy and multi-family residential projects. Neal can be reached at 305-358-2600.

Ryan A. Weiss is an associate in Peckar & Abramson's Miami office, where he concentrates his practice on commercial construction transactions, litigation and dispute resolution. Ryan has represented developers, general contractors, sub-contractors and design professionals in both commercial and residential construction defect matters, including numerous high-exposure cases involving high-rise condominiums, mix-use developments, and homeowner's associations.

References

1. www.mckinsey.com/industries/public-and-social-sector/our-insights/the-us-infrastructure-investment-and-jobs-act-breaking-it-down
2. www.jdsupra.com/legalnews/build-american-buy-america-strong-7260401
3. www.mckinsey.com/industries/public-and-social-sector/our-insights/the-us-infrastructure-investment-and-jobs-act-breaking-it-down
4. www.artba.org/wp-content/uploads/federal-investment/iija/FL.pdf
5. www.whitehouse.gov/wp-content/uploads/2021/08/FLORIDA_Infrastructure-Investment-and-Jobs-Act-State-Fact-Sheet.pdf
6. Id.
7. https://policy.transportation.org/wp-content/uploads/sites/59/2021/08/IIJA-State-DOT-Benefits-2021-08-31-Update-PDF.pdf
8. www.whitehouse.gov/briefing-room/statements-releases/2021/11/08/fact-sheet-the-bipartisan-infrastructure-deal-boosts-clean-energy-jobs-strengthens-resilience-and-advances-environmental-justice/(Public Transit)
9. www.naco.org/resources/legislative-analysis-counties-infrastructure-investment-jobs-act
10. www.mbda.gov/business-center/miami-mbda-export-center

General Data on IIJA Expenditures

Roadways, Bridges and Major Infrastructure: According to the White House, about 20 percent, or 173,000 miles, of the nation's highways and major roads are in poor condition, as are some 45,000 bridges. To that end, the majority of IIJA funds will be put toward bridge repair, rehabilitation, and replacement, as well as approximately 20,000 miles of roadway. The White House reports that the $40 billion investment in bridge repair is the single largest investment of its kind since the construction of the interstate highway system, dating back to the 1950s.[1]

Massive investments in airports, ports and waterways are also included in the IIJA with $25 billion going toward the Airport Improvement Grant Program to maintain and enhance runways, gates and taxiways. Passengers will also benefit from the new Airport Terminal Improvement program that seeks to revitalize terminals, concessions and multimodal connections.

Public Transportation: As recently as 2019, Amtrak reported that its backlog of maintenance projects, commonly referred to as Amtrak's State of Good Repair backlog (SOGR), surpassed $33 billion. The IIJA calls for federal expenditures totaling approximately $66 billion to address maintenance of "assets that have been assessed as at or nearing the end of their useful lives."[2] These initiatives range from acquiring maintenance equipment designed to improve Amtrak's ability to service the lifecycle of the track, to modernization of the Northeast Corridor and bringing world-class rail service to areas outside the northeast and mid-Atlantic. Of the $66 billion investment, nearly $28 billion will be put toward providing Floridians with more opportunities to develop and enhance passenger rail services, including access to $12 billion for the benefit of Florida's intercity passenger rail.[3]

1. www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal
2. www.rtands.com/passenger/intercity/amtrak-sogr-backlog-tops-33-3-billion/ www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/businessplanning/Amtrak-Infrastructure-Asset-Line-Plan-FY20-24.pdf
3. https://policy.transportation.org/wp-content/uploads/sites/59/2021/08/IIJA-State-DOT-Benefits-2021-08-31-Update-PDF.pdf

Infrastructure Investment and Jobs Act Funding Breakdown

46%	Highways and bridges ($387B)
11.5%	Transit ($96B)
8%	Rail ($66B)
8%	Broadband ($64B)
6.5%	Energy grid, tech, supply chains ($54B)
6%	Drinking and wastewater ($48B)
4%	Western water, wildfire management, dam safety ($31B)
3%	Ports and waterways ($27B)
3%	Aviation ($25B)
2%	Economic development, public buildings, agency operations ($18B)
2%	Mine/well cleanup, environmental remediation ($18B)

Represents spending over five years.
Source: U.S. Chamber of Commerce