

## **Infrastructure Investment & Jobs Act of 2021 (H.R.3684)**

Provisions of Interest to NEFI Members & Supporters

November 5, 2021

**IMPORTANT:** Below is a summary of federal legislation. It is not intended for use as legal or tax guidance. NEFI strongly recommends that you consult with a qualified attorney or tax professional on how this legislation may affect your business.

### **I. Background**

On Friday, November 5, 2021, the U.S. House of Representatives approved the Infrastructure Investment and Jobs Act (IIJA) by a vote of [228-206](#). President Biden is expected to sign the bill, which previously passed in the Senate by a vote of [69-30](#). The IIJA is the product of months-long bipartisan negotiations in Congress and constitutes the largest investment in American infrastructure in decades. It largely focuses on “traditional” infrastructure including roads, bridges, rail, ports, airports, the power grid, and broadband internet access. Below is a summary of topline spending amounts and provisions of interest to heating fuel dealers.

### **II. Topline Figures**

The IIJA totals more than \$1 trillion, including \$550 billion in new spending over five years.

- \$110 billion for roads, bridges, and other surface transportation projects (out of a total of \$383 billion in surface transportation projects over five years)
- \$66 billion for passenger and freight rail, including \$24 billion for the Northeast corridor
- \$39 billion to modernize and expand mass transit networks
- \$65 billion to modernize and expand the electric grid
- \$65 billion to expand rural access to broadband internet
- \$55 billion for clean water infrastructure and to replace lead pipes
- \$46 billion for infrastructure resilience and to combat wildfires and drought
- \$25 billion for airports
- \$21 billion for environmental remediation
- \$17 billion for flood mitigation and waterways
- \$15 billion to support greater adoption of electric and low-emission vehicles
- \$11 billion for highway and pedestrian safety programs
- \$8.5 billion in support of carbon capture, utilization, and storage (CCUS) technologies
- \$9.5 billion in support of research, development, and deployment of “clean hydrogen”
- \$5 billion for energy efficiency in residential and commercial buildings
- \$100 million per year in additional LIHEAP funding for five years (\$500 million total)

### **III. Tax Issues & Offsets**

The Congressional Budget Office (CBO) [estimates](#) all but \$256 billion of the IIJA is paid for through largely non-controversial offsets. Supporters insist the bill is fully paid for and say the amount reported by the CBO will be paid for through resulting economic growth and other factors the CBO did not account for. It also includes no substantive tax increases. However, it does extend several federal excise taxes at their current rates including federal excise taxes on motor fuels; new truck, tractor, and trailer purchases; and certain tire purchases. It also extends the heavy vehicle use tax (HVUT). Unfortunately, the IIJA does not include new taxes or fees for the purchase or use of electric vehicles, which are not currently paying for use of public roads. The bill does explore the possibility of a national vehicle miles traveled tax, however (see below).

#### *Vehicle Mileage Tax Pilot Program*

The bill includes a voluntary pilot program to evaluate the feasibility and effectiveness of a vehicle mileage tax (VMT) as a possible replacement for motor fuel excise taxes. Supporters of a national VMT believe it is a more efficient way to finance the use of roads and require hybrid and plug-in electric vehicles to pay into the highway trust fund. The bill authorizes the U.S. Department of Treasury to establish per-mile user fees for passenger motor vehicles, light trucks, and medium- and heavy-duty vehicles. These amounts may vary based on vehicle types and weight classes to reflect estimated impacts on infrastructure, safety, congestion, the environment, or other factors.

#### *Sale from the Strategic Petroleum Reserve*

The bill orders the sale of 87.6 million barrels (bbls) of crude oil from the Strategic Petroleum Reserve (SPR) between FYs 2028 and 2031 and lowers the minimum volume from 340 million to 252.4 million bbls. These sales are expected to raise an estimated \$6 billion over ten years. Fuels stored in the Northeast heating oil and gasoline reserves are unaffected. The SPR currently contains 621.3 million bbls and is authorized for up to 714 million bbls. This provision continues the trend of using the SPR as a “piggy bank” and has attracted criticism. The Biden Administration ordered a review of the size and responsiveness of the SPR in June. Findings are due by October 2021 and expected to recommend the size of the SPR be further reduced.

#### *Early Termination of the Employee Retention Tax Credit*

The IIJA orders early termination of the popular employee retention tax credit (ERTC). The bill repeals the extension to the ERTC included in the coronavirus relief bill enacted on March 11, 2021. If the IIJA becomes law, wages paid after Sept. 30, 2021 would no longer be eligible for the credit. Wages paid by an eligible recovery startup business are not affected.

### **III. Surface Transportation & Highway Safety**

The bill includes the Surface Transportation Reauthorization Act (STRA), which reauthorizes federal highway programs for five years, or through September 30, 2026. The STRA provides \$383.4 billion for this purpose, in addition to the \$110 billion in new federal funding for roads, bridges, and other highway-related infrastructure improvements mentioned above. In addition to funding provisions listed elsewhere in this document, the bill provides:

- \$72 billion for the Surface Transportation Block Grant Program.

- \$2.03 billion for the Motor Carrier Safety Assistance Program to fund state motor carrier safety enforcement.
- \$1.59 billion in rural surface transportation grants.
- \$13.2 billion in funding to states for the Congestion Mitigation & Air Quality Improvement Program.
- \$400 million for a grant program to reduce truck emissions and idling at port facilities.

#### *Commercial Motor Vehicle Safety*

The bill requires the U.S. Department of Transportation (DOT) to examine the effectiveness of electronic logging devices and establish new standards for the installation of automatic braking in newly manufactured commercial motor vehicles. The bill also requires the DOT to strengthen standards for rear underride guards on trucks and trailers and requires a study whether new regulations for side underride guards are necessary. It also creates a new Advisory Committee on Underride Protection.

#### *Apprenticeship Pilot Program for Young CDL Drivers*

The IJIA establishes an apprenticeship pilot program for 18-to-20-year-old CDL drivers to operate commercial motor vehicles (excluding hazardous cargo) in interstate commerce after completing a 120-hour apprenticeship program and a 280-hour probationary period. The pilot program would last for three years. Lawmakers could not reach agreement on including the full DRIVE Safe Act apprenticeship program, which NEF supported, and settled on a pilot program.

#### *Promoting Women in Trucking*

Women are 47% of the U.S. workforce but comprise only 24% of transportation and warehousing jobs, 6.6% of truck drivers, 12.5% of all workers in truck transportation, and 8% of freight firm owners. Therefore, we are pleased the NEFI-backed *Promoting Women in Trucking Workforce Act* (H.R.1341, S.469) is included in the infrastructure bill. It requires a new Women of Trucking Advisory Board at the Federal Motor Carrier Safety Administration (FMCSA).

#### *Truck Leasing Task Force*

The IJIA requires the DOT to establish a Truck Leasing Task Force to evaluate common truck leasing agreements and their effect on driver compensation and the safe operation of vehicles, including compliance with hours of service and speeding laws.

#### *The infrastructure bill also:*

- Directs the DOT or its relevant subagencies (such as FMCSA) to conduct studies on:
  - The impact and safety of self-driving vehicles
  - Marijuana-impaired driving and possible creation of a clearinghouse for marijuana-related research
  - CDL driver compensation, with an emphasis on methods of compensation and implications for driver retention

- The causes of crashes that involve a commercial motor vehicle, including data requirements, data collection procedures, reports, and other measures to improve the ability of States and DOT to monitor crash trends and evaluate safety improvement programs
- Creates a new Advanced Research Projects Agency-Infrastructure (ARPA-I) to support research and development of cutting-edge transportation technologies.
- Establishes a voluntary pilot program to evaluate the feasibility and effectiveness of a national vehicle mileage tax (see “Part III. Tax Issues & Offsets” above).

#### **IV. Electrification**

The IIJA does not include new or increased subsidies for purchase of electric vehicles (EVs) or air source heat pumps. However, it does make related investments that may support future adoption of these technologies, including \$65 billion in new funding for grid resilience and modernization. The bill also provides \$7.5 billion in support of President Biden’s goal of deploying a national network of 500,000 charging stations and facilitating greater consumer access to EV chargers along highway corridors and communities, particularly in rural and lower-income areas. The IIJA establishes two major new grant programs in pursuit of these goals.

##### *Electric Vehicles & Charging Infrastructure*

The bill creates a “National Electric Vehicle Formula Program” that provides \$5 billion over five years via state formula grants for the installation and maintenance of EV charging infrastructure. The bill also provides \$2.5 billion over five years for a new DOT grant program for state and local governments to support the installation of EV charging stations *as well as* refueling infrastructure for hydrogen, propane, and natural gas vehicles. \$1.25 billion of this amount is set aside for community grants that prioritize rural and lower-income communities. The federal share of both grant programs is capped at 80% of the cost of the project.

For the first time, the IIJA makes EV charging infrastructure eligible for federal grants to states and localities under the Surface Transportation Block Grant Program (funded at \$72 billion). States may also access funds for the purchase of medium- or heavy-duty zero emission vehicles and related charging equipment under the Congestion Mitigation & Air Quality Improvement Program (funded at \$13.2 billion). Further, the Secretaries of Transportation and Energy must form an EV working group that will focus on ways to encourage greater adoption of EVs.

Also of note, the bill creates a \$2.3 billion port infrastructure development program and a \$400 million grant program designed to reduce truck emissions at port facilities. Electric vehicle and fuel cell vehicle infrastructure is eligible under both programs. Lastly, \$7.5 billion is provided to encourage the purchase of EV and low emission school buses and ferries.

##### *Electric Batteries*

The bill also seeks to support U.S. supply chains for electric battery manufacturing. Most significant is a \$3 billion Battery Material Processing Grant Program at the U.S. Department of Energy (DOE). It also provides \$140 million to establish a rare earth mineral demonstration facility at DOE and over \$300 million in support of battery disposal, recycling, and reuse.

## **V. Building Efficiency**

The IIJA authorizes and increases funding for several programs, including:

- \$3.5 billion for state formula grants under the DOE Weatherization Assistance Program.
- \$550 million for Energy Efficiency & Conservation Block Grants to states and expands it to include renewable energy, zero-emission transportation, and related infrastructure.
- \$250 million for a revolving loan fund to promote state capitalization of loan and grant programs for commercial and residential efficiency auditing and retrofits.
- \$200 million for a new state grant program to support energy auditor training.
- \$10 million in grants to establish training and assessment centers at higher learning institutions for building efficiency and environmental performance, including of research and development of alternative energy sources for heat and power.

### *Other Notable Provisions*

States would be encouraged to adopt updated building energy codes under a new \$225 million competitive grant program through the Department of Energy. Among the factors that must be considered are benefits relating to “resilience and peak load reduction, occupant safety and health, and environmental performance.” The bill also establishes an Energy Jobs Council to survey energy, efficiency, and motor vehicle employers, and analyze employment figures, demographics, and portion of working hours devoted to regulatory compliance. The IIJA *does not* include new tax credits, consumer rebates, or other incentives for renewable fuels or the installation of energy efficient HVAC appliances. These proposals are likely to appear in a year-end tax reform package or Democrats’ \$1.75 trillion budget reconciliation bill.

## **VI. Renewable Fuels**

The bill does very little to support greater investments in renewable fuels infrastructure or the adoption of renewable fuels for transportation or heating. National biofuel advocacy organizations have criticized the bill’s focus on electrification and the missed opportunity to increase consumer access to higher blends of renewable fuels. Incentives for renewable fuel use and infrastructure have been proposed as part of Democrat’s separate \$1.75 trillion budget reconciliation measure. NEFI has strongly advocated for their inclusion in that bill.

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