



# SCWA Legislative Update

August 9, 2021



## Senate Clears Final Passage Of Bipartisan Infrastructure Bill

Sunday night, by a vote of 68-29 the Senate passed H.R. 3684, Infrastructure Investment And Jobs Act of 2021, ending debate and putting the bill on track for final passage today or Tuesday.

Sixty votes were required for passage. Fifty Democrats and eighteen Republicans provided the winning margin.

The Senate debated amendments all day Sunday. While there's no official data yet on any amendments passed, voting tallies and cloakroom summaries should be available soon. Go to [www.democrats.senate.gov](http://www.democrats.senate.gov) and click on "The Floor," and then "Wrap-Up."

Cloture effectively shuts down passage of any further amendments because now they can only be passed by unanimous consent. Amendments can still be proposed, but a single senator can block any amendment.

The Senate chose to disregard Congressional Budget Office's data showing the bill's cost is approximately \$250 billion short of being fully paid for. This shortage had increased senators' determination to stand by their original pay-fors, which includes terminating the Employee Retention Credit on October 1, 2021, while retaining the January 1, 2022 expiration date for an eligible employer which is a "recovery startup business."



## Infrastructure Update

### Background:

On August 1, the 2,702 page bipartisan infrastructure legislation was officially released providing \$550 billion in spending above budget baseline over five years. Shortly after releasing the bill Majority Leader Chuck Schumer (D-NY) offered the Sinema-Portman amendment as a substitute for the House passed H.R. 3684, "The INVEST in America Act." The amendment is now SA 2137.

Time is of the essence with the current surface transportation reauthorization set to expire on September 30. Failure to act promptly could halt important road and bridge projects and will further disrupt America's economic recovery.

### Funding:

The proposal includes \$110 billion in spending above baseline to address the aging infrastructure needs of the nation's roads and bridges. \$55.48 billion will be for Federal Highway Administration contract authority (included in the EPW bill) and \$55.52 billion will be for one-time general fund guaranteed appropriations.

FHWA Highway Trust Fund Contract Authority in SA 2137 (Including ER):

FY22 - \$58.2 billion  
FY23 - \$59.5 billion  
FY24 - \$60.8 billion  
FY25 - \$62.0 billion  
FY26 - \$63.4 billion  
Total = \$304 billion

Additionally, the bill includes a \$118 billion general fund transfer to the Highway Trust Fund. \$90 billion will be deposited into the Highway Account and \$28 billion will be deposited into the Mass Transit Account. This transfer was expected as a Highway Trust Fund fix remains elusive.

The bipartisan infrastructure agreement includes \$27 billion over five years for a competitive grant program to assist with the repair and replacement of deficient and outdated bridges and ease the national bridge repair backlog and also includes \$5 billion over five years for a state formula program for EV charging infrastructure deployment.

After a lot of back and forth on the transit title the bill also gives a sizable increase to transit spending providing a 43% increase from the 2015 FAST Act. Transit will receive almost \$70 billion over five years.

Furthermore, the infrastructure package would distribute a lot of the money via the US Department of Transportation through discretionary programs. It looks like these competitive grant programs could total over \$180 billion.



## **FTC Votes Unanimously to Enforce Right to Repair**

During a commission meeting on July 21st, the Federal Trade Commission voted unanimously to enforce laws around the Right to Repair, thereby ensuring that US consumers will be able to repair their own electronic and automotive devices.

The 5 to 0 vote signals the commission's commitment to enforce both federal antitrust laws and a key law around consumer warranties—the Magnuson Moss Warranty Act—when it comes to personal device repairs.

The vote, which was led by new FTC chair and known tech critic Lina Khan, also comes 12 days after President Joe Biden signed a broad executive order aimed at promoting competition in the US economy.

A portion of it encouraged the FTC, which operates as an independent agency, to create

new rules that would prevent companies from restricting repair options for consumers.



## **US Department of Labor Announces Final Rule to Rescind March 2020 Joint Employer Rule**

The U.S. Department of Labor recently announced a final rule to rescind an earlier rule, “Joint Employer Status under the Fair Labor Standards Act” that took effect in March 2020. By rescinding that rule, the Department will ensure more workers receive minimum wage and overtime protections of the Fair Labor Standards Act.

The rescinded rule included a description of joint employment contrary to statutory language and Congressional intent. The rule also failed to take into account the department’s prior joint employment guidance. The U.S. District Court for the Southern District of New York vacated most of the rule in 2020.

Under the FLSA, an employee can have more than one employer for the work they perform. Joint employment applies when – for the purposes of minimum wage and overtime requirements – the department considers two separate companies to be a worker’s employer for the same work. For example, a joint employer relationship could occur where a hotel contracts with a staffing agency to provide cleaning staff, which the hotel directly controls. If the agency and the hotel are joint employers, they are both responsible for worker protections.

A strong joint employer standard is critical because FLSA responsibilities and liability for worker protections do not apply to a business that does not meet the definition of employer.

The final rule becomes effective September 28, 2021.

For more information about the FLSA or other laws it enforces, visit the Wage and Hour Division, or call toll-free 1-866-4US-WAGE.



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