

# THE BOND BUYER

## Surface transportation bill muniland's best bet in 2020

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Muni market participants are banking on a surface transportation reauthorization bill passing in the first half of next year before elections get underway in 2020.

The November election leaves a small window to pass The America's Transportation Infrastructure Act, a five-year surface transportation reauthorization. It would authorize \$287 billion in funding from the depleted Highway Trust Fund and would be about a 27% increase over the Fixing America's Surface Transportation Act's levels. The FAST Act is set to expire on September 30.

"That (ATIA) is sort of the one must-pass pieces of legislation this year related to infrastructure," said Michael Decker, a consultant to Bond Dealers of America.



A reauthorization of the surface transportation bill could help push municipal initiatives such as advance refunding and a higher cap on private activity bonds. **Bloomberg News**

The new reauthorization could be the muni market's best chance to attach hoped-for initiatives such as raising the cap on private activity bonds and the reinstatement of tax-exempt advance refunding.

The Senate Environment and Public Works Committee passed ATIA in July 2019, but is still in need of a financing package. If ATIA is not passed with a funding mechanism in place such as a gas tax or vehicle miles traveled tax, lawmakers could decide to maintain current authorization levels, though that would create uncertainty for municipalities planning infrastructure projects.

A gas tax increase has long been proposed as a way to fund the HTF and has not been raised on the federal level for over 20 years. A vehicle miles traveled tax would be a fee based on how far drivers go and would be tracked by cellphone, self-reporting or other devices.

Lawmakers have proposed a VMT to fund the HTF and Sen Tom Carper, D-Del. promoted a VMT solution in ATIA.

Sen. Sam Graves, R-Mo., has supported a VMT and wants to eliminate the gas tax.

"While gas and diesel taxes have historically served as efficient mechanisms for sustaining the Trust Fund, they will not meet our future needs," Graves said in a March press release.

Sens. Mitt Romney, R-Utah and Joe Manchin, D-W.Va. have also proposed creating panels that would guarantee long-term viability of inoperative trust funds — the Time to Rescue United States' Trust or TRUST Act. It would establish congressional panels to recommend a plan for restoring specific trust funds, they said in a press release.

Among those funds would be the Highway Trust Fund as well as Medicare Hospital Insurance and others.

Lawmakers have also said they want electric vehicle drivers to pay into the HTF.

Sen. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works committee, introduced ATIA and introduced the Fairness for Every Driver Act in 2019. It would establish an annual highway user fee for alternative-fuel vehicles, compared to what drivers of gas-power vehicles pay, Barrasso wrote in a press release.

Barrasso said the user fee would produce billions of dollars to put into the HTF.

An upcoming election year also brings its challenges as bills become harder to pass during campaign season later in the year. Some say lawmakers would need to pass ATIA in the first half of 2020.

“That’s a very real possibility, that they can just extend the current authorization for some period of time at current levels and wait until the new Congress to tackle this bill,” Decker said. “There’s a reasonable chance that will be the outcome.”

The House Ways and Means Committee could find a way to fund the bill, and Decker said there has been a lot of discussion in the committee by its Chairman Richard Neal, D-Mass., on doing so.

“But there’s just been no action and that’s been the frustrating part,” Decker said. “I hope that this is still high on the president’s agenda and high on Chairman Neal’s agenda. Everything they say indicates that it is and I hope that there is an opportunity for some bipartisan agreement.”

An election year brings uncertainty, but bipartisanship could get a surface transportation reauthorization act through, said Ken Bentsen, president of the Securities Industry and Financial Markets Association.

“Nothing is for certain and things are always dicey in a political year,” Bentsen said. “There have been times in the past where big deals are achievable because there is a mutual interest in getting things done.”

However, pay-fors in the bill bring complications and a condensed calendar due to an election year could work against the bill, Bentsen said.

ATIA is still the most likely to pass among other infrastructure bills, Bentsen said and added that it was not “inconceivable” to get an infrastructure package like ATIA passed.

The surface transportation reauthorization bill could be the one piece of bond-friendly legislation that passes in 2020, said Rich Moore, president of the National Association of Bond Lawyers.

“We’re heading into a year where there will largely be gridlock, there may be a piece of legislation or two that just has to be passed,” Moore said. “There could be some opportunities there to attach bond-related provisions, but for the most part, I don’t expect much to actually get done in 2020.”

The provisions could be a reinstatement of advance refundings, an increase in the bank-qualified cap or an expansion of the allowable uses of private activity bonds.

“If we got one of those into the FAST act, that would be a success,” Moore said.

The House Transportation and Infrastructure Committee is expected to introduce a similar bill and Chairman Peter DeFazio, D-Ore., has plans to introduce legislation, said Ed Mortimer, vice president of transportation and infrastructure at the U.S. Chamber of Commerce.

The U.S. Chamber of Commerce’s goal in 2020 is to have the full Senate take ATIA up with a financing mechanism, Mortimer said.

“We started this session of Congress hoping that we could have a broader discussion on infrastructure modernization, but the realistic goals we’re probably only going to be able to address surface transportation,” Mortimer said.

The Chamber released a four-point plan in 2018 which included an increase in the gas tax, leveraging more public and private resources, streamlining the permitting process and expanding the American workforce.

Mortimer wants to encourage private investment.

“We need to encourage more private investment because with just the public sources alone, we’re not going to get all the revenue necessary to modernize America’s infrastructure,” Mortimer said.

Mortimer wants to see ATIA raise or eliminate the cap on private activity bonds for highway projects allotted by the DOT, which currently has a cap of \$15 billion and most of which has been allocated already.

“We’d like to see this reauthorization raise that or even eliminate the cap,” Mortimer said. “We view this opportunity as a way to enhance the tools that private investors would use.”

If ATIA does not pass and FAST Act is extended, it creates uncertainty, Mortimer said.

The FAST Act had to be extended many times and created havoc for the public sector and private investors because of federal funding uncertainty, Mortimer said.

If surface transportation is reauthorized, it creates predictable funding and states will be able to bond more.

“States will be able to use bonding more as a mechanism because they would see that as predictable federal funding,” Mortimer said.

Mortimer also sees action on reauthorizing the Water Resources Development Act (WRDA) which is set to expire at the end of 2020. It would pay for federal water infrastructure projects and encourage private investment, Mortimer said.

As for presidential candidates that could take office in 2021, Mortimer said the Chamber has spoken with all of them on both sides of the aisle to make sure infrastructure is part of the discussion.

“Whatever we’re not able to accomplish next year, we want to make sure that the next president is going to make this a major focus,” Mortimer said.

The candidates will be speaking at a 2020 Presidential Candidate Forum on Infrastructure in February.

This year could have the potential for an infrastructure bill, said Emily Brock, director of Government Finance Officer Association’s federal liaison center.

“I feel very positive about 2020 and the potential for an infrastructure agenda to put its best foot forward,” Brock said.

Brock is looking for ways to augment municipal bonds after the Tax Cut and Jobs Act in 2017, and said GFOA was getting a “very interested ear” from many House Ways and Means committee members.

ATIA would be bonds’ best bet and Brock is looking to see what would be the best vehicle to move bond initiatives through Congress.

“I think that’s (ATIA) probably our sure thing,” Brock said. “We’re going to be surprised to see how much stuff actually moves in the near future and we just want to make sure we understand where there is movement.”

The American Association of State Highway and Transportation Officials agrees the focus will be on reauthorizing the FAST Act in 2020.

“The funding piece remains to be determined and we know the challenges of the Highway Trust Fund that are looming out there, but we’re happy to see the policy side of things advance and for it to be done in a bipartisan area,” said Susan Howard, AASHTO program director for transportation finance.

States are starting to take their own initiatives by raising their gas taxes and realize that they can’t count on the federal government, Howard said. Extensions on reauthorizations in the past have made it difficult to plan for projects, Howard later added.

“Our folks at the DOT don’t like living in that zone of uncertainty when it comes to when there will be guaranteed funding over a long period of time,” Howard said.

“We’re used to it and we can operate during those extensions, but it’s not ideal. In general, it’s disruptive and difficult to plan. There’s a need to have some certainty and that applies to the bond market as well.”

Ports are looking to invest more in 2020, said Cary Davis, the director of government relations and counsel at The American Association of Port Authorities.

AAPA puts out a survey every five years to look at what and where ports and private sector partners are planning to invest in over the next five years.

From the early stages of the survey, ports seem optimistic about their future and that they’re planning some pretty big investments, said Aaron Ellis, public affairs director at AAPA.

“There’s just a general sense from what I can see that infrastructure is really high and important priority for ports and that they’re planning some major multi-billion-dollar investments,” Ellis said.

The investments will be contingent on a federal share, Ellis said. It’s not ports’ responsibilities to make investments on freeways and other connector points, but want to make the investment on the ports themselves. Ports need federal help on those connecting points, Ellis said.

“Even with the tariffs looming, I think there’s still major optimism among ports in this country that trade is going to continue to blossom,” Ellis.

Moody’s Investors Service gave a stable outlook to public ports in 2020 amid high trade tension and sustained positive growth in cargo and cruise volume in the next year.

Capital spending also continues to exceed cash flow, driven by the need to adapt to larger ships amid pricing pressures and decelerating volume growth.

Moody’s said their outlook could turn negative if an escalation of a trade dispute between the U.S. and China limits trade growth.