



*We're leading the movement to build a Bicycle Friendly America for Everyone*

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*January 7, 2022*

The Honorable Pete Buttigieg  
Secretary  
U.S. Department of Transportation  
West Building, Room W12-140  
1200 New Jersey Ave. SE.  
Washington, DC 20590

Re: FHWA Docket Number FHWA-2021-0021

Dear Secretary Buttigieg,

Thank you for the opportunity to offer comments and suggestions on the implementation of the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). With the passage of the BIL, we have an historic opportunity to address the traffic safety crisis on our roads. Safety data shows that roadway fatalities are increasing fastest among vulnerable road users including people biking, walking or using mobility devices such as wheelchairs.

We are the League of American Bicyclists, with a mission to build a Bicycle Friendly America for everyone. We are powered by more than 300,000 grassroots advocates for bicycling, including over 350 state and local advocacy organizations plus individual and business members who represent the rights and interests of the 57 million Americans who ride bikes. The League believes when more people can safely choose to go places by bike, life is better for everyone, communities are better connected, and our nation is healthier and economically stronger.

We appreciate the decisions the Department has been making in terms of promoting fix it first policies, and defining quality of life in RAISE grants as improving racial equity and removing barriers, including automotive dependency. We believe the suggestions and comments below will complement the goals of your administration to improve equity, reduce carbon emissions, and make our transportation more people centric.

This memo includes comments on the following (Section of BIL included):

*FHWA programs:*

Transportation Alternatives (Sec. 11109)  
Highway Safety Improvement Program ( Sec. 11111)  
Congestion Mitigation and Air Quality (Sec. 11115)  
Bridge Improvement Program (Sec. 11118)  
Bicycle Transportation and Pedestrian Walkways (Sec. 11133)  
Carbon Reduction Program  
MUTCD and Standards (Sec. 11129 and 11135)  
Increasing Safe And Accessible Transportation Options (Sec. 11206)  
Grants for Charging and Fueling Infrastructure (Sec 11401)  
Carbon Reduction Program (Sec. 11402)

*Discretionary programs*

Safe Streets for All (Sec. 22412)

*NHTSA programs*

Underride Protection (Sec. 23001)  
Highway Safety Grants (Sec. 24102)  
Data-Driven Approaches to Crime and Traffic Safety (DDACTS)  
National Priority Safety Program (Sec. 24105)  
Crash Data (Sec. 24108)  
Crash Avoidance Technology. (Sec. 24208).  
New Car Assessment Program (Sec. 24213)  
Headlights (Sec. 24212)  
Hoods and Bumpers (Sec. 24214)  
SMART grants (Sec. 25005)  
Prohibit Racial Profiling (Sec. 25024)

*FHWA PROGRAMS*

**Transportation Alternatives** (Sec. 11109)

Most importantly, we ask that FHWA push states to continue implementing the program and funding projects while updated guidance is in process. While the new law does make several changes, projects that were eligible under the FAST Act are still eligible, so there is no need for a delay in holding competitions. In the past, State DOTs have been slower to implement Transportation Alternatives than other programs. Given the crisis we are facing in traffic fatalities, particularly with vulnerable road users, it is important that Federal Highways take a leadership role in promoting these projects.

When writing and disseminating guidance, FHWA should:

- List all eligible projects, including the Safe Routes to School program.
- Highlight and promote the change allowing states to use Highway Safety Improvement Program funds as a local match for projects that will improve safety.
- Highlight that large Metropolitan Planning Organizations now have obligation authority over Transportation Alternatives funds. This should improve the obligation rates of the program.

Transferability

BIL changes the ability for a state DOT to transfer 50 percent of TAP funds. The BIL requires that, before a state transfers TAP funds, the Secretary of Transportation first certifies that the state demonstrated that, after running a fair competition and offering technical assistance to eligible entities, there were not sufficiently suitable applications from eligible entities to use the funds to be transferred

FHWA should require that the state list projects left unfunded and the reasons the project was unsuitable, and make that information available to the public. That will allow applicants to understand the concerns with their project, and how they can fix it.

### High Need

The bill includes a requirement for states to prioritize projects based on their location and impact in high-need areas. It also allows states to define high-need based on their state.

- We recommend FHWA share best practices, including aligning with Harvard School of Public Health research, on getting federal funds to "vulnerable populations" as part of project selection.<sup>1</sup>
- FHWA should also offer processes as to how to define the impact on high need communities. Finally, FHWA should prepare a future research project to test how these projects impact communities after they are built. The results will help FHWA and states update their processes for stronger results.

### **Highway Safety Improvement Program (Sec. 11111)**

The BIL makes changes to the Highway Safety Improvement Program (HSIP) which have the potential to help slow the rise of traffic fatalities. Specifically, the *Vulnerable Road User Safety* Special Rule requires that in states where vulnerable road users (VRUs) fatalities make up 15 percent or more of overall traffic fatalities, state DOTs must obligate 15 percent or more of their HSIP apportionment to projects and programs aimed at keeping VRUs safe from injury and fatality.

However, there is no federal data source that collects a standardized, consistent record of how HSIP funding is broken down across projects. State Departments of Transportation argue that the Fiscal Management Information System is not a correct reflection of spending. States submit HSIP annual plans every year, but the FHWA Safety Office reports that this data is also not standardized or comparable across states. To best implement this special rule, FHWA must:

- Standardize project cost calculations. In order to assess whether a state is compliant with the new requirement to spend money on VRU safety, it will be critical to have an accurate and comparable measure of HSIP funds spent on VRU safety.

Both HSIP annual reports and FMIS must report accurate data, however, fixing the FMIS system will promote accurate and comparable data across all programs, not just safety.

- FHWA should set a standard for reporting costs of multimodal projects, including intersections, bridges, and road projects, to determine how much of a project should go to each mode. For instance, when redesigning an intersection, what percentage benefits bicycling and pedestrians (protected bike infrastructure within the intersection, refuge islands and bulb outs), and what is for motor vehicle occupants. Presently, there is no uniform method for reporting what percentage of a project benefits VRUs, which means it

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<sup>1</sup>[https://cdn1.sph.harvard.edu/wp-content/uploads/sites/84/2017/01/SRTS\\_Report\\_1.9.17\\_Final.pdf](https://cdn1.sph.harvard.edu/wp-content/uploads/sites/84/2017/01/SRTS_Report_1.9.17_Final.pdf)

is not possible to hold a state accountable to meeting a set percentage or to compare across states. This will be needed for effective implementation of the BIL's safety provisions.

### **Safety Performance Measures**

While there are no changes to the safety performance measure in the HSIP section of the bill, the 402 section on performance measures requires quantifiable annual performance targets that demonstrate constant or improved performance for each performance measure.

Under the FAST Act many of the performance measures used for HSIP were the same or similar to those used for 402/NHTSA. It is confusing and counterproductive to have similar performance measures but different standards under the two programs. FHWA and NHTSA should both commit to requiring goals for improving performance.

Regressive performance measures, where a state DOT's goal is increasing fatalities, should not be allowed.

### **Bicycle Transportation and Pedestrian Walkways (Sec. 11133)**

#### Use of STBGP and CMAQ funds

The BIL makes shared micromobility transportation facilities eligible for Surface Transportation Block Grant and Congestion Mitigation and Air Quality programs and continues the eligibility for "carrying out non construction projects related to safe bicycle use safe access for bicyclists and pedestrians."

FHWA should interpret this as including operating funds for bikeshare as eligible under these programs. The lack of operating funds makes it difficult for smaller communities to invest in bikeshare.

#### Bridges

23 USC 217 (e) states that the Secretary can require bicycling and walking access when a bridge is replaced or reconstructed, if it is within a reasonable cost. However, there is no definition of what a reasonable cost is, or how to calculate what portion of the project should be considered when adding bicycling and walking access.

- FHWA should create a benefit-cost analysis of bicycling and walking access on bridges to help define 'reasonable cost.' Under the RAISE grants, your Administration defined Quality of Life as improving racial equity and removing barriers including automobile dependency. Bridges are barriers for families and individuals without access to a car, and bridges are often the missing link in connecting neighborhoods with town centers and the jobs, services and schools located there.
- FHWA should create a standard for determining the cost of including bicycling and walking facilities on a bridge and define 'Reasonable Cost.'

An FHWA standard on how to determine the cost of including bicycling and pedestrian access for multi-modal projects should also determine the cost of including bicycling and walking access on bridges. This will make a benefit-cost analysis possible and will support state DOT compliance with this section. The states' analysis should be transparent and available to the public.

### **Congestion Mitigation and Air Quality (Sec.11115)**

The Bike League would like to highlight that bikeshare is now eligible for CMAQ and is listed under the eligibility for a project or program that shifts traffic demand to nonpeak hours or other transportation modes.

### **The Bridge Investment Program (Sec.11118)**

The program requires the consideration of *“traffic requirements typical of the regional corridor or local network in which the bridge is located.”*

FHWA should issue guidance that when considering local networks, states must consider bicycling and walking networks. Bridges without safe access for vulnerable road users are barriers for families without a car, and are often the missing link in connecting neighborhoods with town centers and the jobs, services and schools located there.

### **Standards (Sec. 11129) and Manual for Uniform Traffic Control Devices (Sec. 11135)**

The standards section revises the purpose of the MUTCD from “promote the safe and efficient utilization of the highways” to “promote the safety, inclusion, and mobility of all users,” while section 11135 includes new language saying DOT should incorporate vulnerable road user safety and the recommendations of the National Committee on Uniform Traffic Control Devices (NCUTCD), to the greatest extent possible.

- If NCUTCD recommendations do not meet the new purpose, those comments should not be included or US DOT should ask the NCUTCD to revise any recommendations to ensure they meet the new purpose before considering incorporation.
- The BIL recommends a revision within 18 months. The Bike League recommends US DOT to consider an earlier update if possible given the proposed MUTCD.
- The Bike League wants to highlight that the changes in the proposed MUTCD include significant updates relevant to protected bike lanes that meet the new purpose and the new language under section 11136.

### **Increasing Safe And Accessible Transportation Options (Sec. 11206)**

This section requires states and MPOs to use 2.5 percent of planning funding for the development of complete streets standards and policies and prioritization plans.

FHWA should be clear that the program is meant for the state to develop their own complete streets standards and policies, and not just to fund local governments to do such plans. The state flexibility clause is only applicable to states that have complete streets policies and standards in place, and have a state-wide prioritization plan. FHWA should include regular updates on its website with links to state complete streets standards, policies and prioritization plans.

### **Grants for Charging and fueling Infrastructure (Sec 11401)**

This program provides \$2.5 billion for “communities and corridors” through a competitive grant program to “ensure that charger deployment meets administration priorities such as supporting rural charging, improving local air quality and increasing EV charging access in disadvantaged communities.”

To meet this goal, the US DOT should work with the Department of Energy and the Environmental Protection Agency to take advantage of the definition of an alternative fuel

vehicle in 49 USC 13211 can include, "any other type of vehicle that the Administrator demonstrates to the Secretary would achieve a significant reduction in petroleum consumption."

Using this definition, US DOT should allow chargers for electric bikes and other micromobility to qualify, especially in disadvantaged communities where electric vehicles may be out of reach for residents.

### **Carbon Reduction Program (Sec. 11403)**

Allow communities to use the program for building active transportation networks as a single project. By ensuring safe access across a network, a project will do more to reduce carbon pollution.

### **Expediting Small Projects**

Finally, one of the major roadblocks to getting small projects like sidewalks and bike lanes on the ground can be the permitting process. Sidewalk projects can often result in 30 percent of the cost going to the permitting process. Creating policy options to expedite project delivery on small projects, even just for those on already paved areas, would allow communities to improve safety for our most vulnerable road users.

### *DISCRETIONARY PROGRAM*

### **Expediting small projects**

US DOT should allow local government discretionary grant awardees to use transit agencies for as a fiduciary agent if:

- the project meets the requirements of FTA's *2011 Final Policy Statement on Eligibility of Pedestrian and Bicycle Improvements under Federal Public Transportation Law (76 FR 52046)*
- Both the awardee and the transit agency agree.

### **Safe Streets for All (Sec. 22412)**

This program is a discretionary grant program for communities to apply for funds to develop safety action plans, as well as funds to implement those plans. The BIL states a Safety Action Plan may include a data-driven approach to enforce traffic laws, and includes enforcement activities as eligible.

### Equity concerns

The program is loosely based on Vision Zero. Evidence shows that when communities adopt a Vision Zero plan, the community often invests in enforcement first. In many cases those actions disproportionately occur in black and brown neighborhoods.

To combat any racial or ethnic inequities in enforcement, US DOT should develop grant criteria for any plan, or at least for any implementation proposal that includes enforcement. Criteria should include:

- The entity applying for the grant certifies they have a law or policy prohibiting racial profiling,
- The application includes a plan for ensuring that enforcement will be equitable, and
- The grantee will report on all enforcement actions done under the grant with demographic data in aggregate of stops and citations issued, and the demographic data of the neighborhood where stops and citations occur.

### Existing safety plans

Many eligible entities may already have safety action plans, or similar plans that meet the spirit of the program, but may be missing a specific requirement as laid out by the guidance. US DOT should set up a process so that those eligible entities can apply for project funding with as long as they first update their plan.

### *NHTSA PROGRAMS*

#### **Underride protection (Sec. 23001)**

The BIL requires NHTSA to revise the standards for rear underride guards that prevent passenger compartment intrusion from a trailer or semitrailer crashing with a passenger motor vehicle traveling at 35 miles per hour, but not at higher speeds. The BIL also requires research on the impact of side underride guards.

NHTSA should go further than the requirements in BIL and upgrade Federal Motor Vehicle Safety Standard (FMVSS) 223 and 224 for rear underride guards and require the installation of comprehensive underride protection (side and front) for the entire commercial motor vehicle (CMV).

#### **Highway Safety Grants (Sec. 24102)**

The BIL calls for NHTSA and Governors Highway Safety Association to review and revise performance measures for Highway Safety Grants. The current performance measures include similar measures as the HSIP performance measures (number and rate of fatalities and serious injuries) plus activity measures, currently measuring citations issued.

The Bike League recommends:

- NHTSA and GHSA should include the activity measures when reviewing and revising performance measures.
- The process should include a public and transparent stakeholder process, including equity in enforcement interests and active transportation interests, as well as traditional safety stakeholders.
- Consider performance measures that promote education of decision makers on Safe System policy and infrastructure changes.
- When considering citations as enforcement performance measures, require citations to directly relate to the purpose of the funding (i.e. not just citations issued, but DUI citations issued using impaired driving funds.)
- Choose performance measures that consider real world experiences of how laws are enforced, and promote best practices to reduce racial inequities.

#### **Data-Driven Approaches to Crime and Traffic Safety (DDACTS)**

While not directly addressed in the BIL, NHTSA has promoted DDACTS through its work with law enforcement. Given the directive to reassess performance measures, this is a good opportunity for NHTSA to rethink its support for DDACTS. DOT's mission and statutory authority is focused on traffic safety. Yet, for decades, DOT has championed programs that couple traffic enforcement and crime fighting. DOT's DDACTS program, launched in 2008 and updated in 2021, is just the latest example of this misguided approach. By teaching law enforcement that they should engage in traffic enforcement in order to fight crime, the DOT has

encouraged law enforcement to engage in pretextual policing – stops conducted for a traffic infraction, but where the officer has an ulterior motive, such as to investigate the possibility of unrelated criminal activity. The harms of pretextual stops are well documented – from avoidable deaths, to invasive searches, to enormous racial disparities.

We ask the DOT to reconsider any of its programs that encourage law enforcement to use traffic stops as a crime fighting tactic. DOT should reconsider these programs, not only to evaluate their efficacy but also to conduct a meaningful impact of the social harms these programs create, including unnecessary police encounters and racial disparities.

#### Move Over Laws

The BIL includes education and enforcement of Move Over laws for first responders. Please consider including education of safe passing laws for bicyclists in education efforts around the Move Over laws.

#### Public participation process

Section 24102 (b)(1)(B) of the BIL requires state plans to be based on meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities.

NHTSA should:

- Set guidance on what constitutes meaningful public participation and engagement.
- Require states to report on how and to whom they asked to participate in the process, specifically listing equity focused, disability rights and active transportation stakeholders, and any other NHTSA feels are appropriate.
- Collect dates, times, and avenues for input into the state public participation processes and disseminate that to national stakeholders to help publicize the opportunity so stakeholders can then encourage their constituents to participate.

#### Public Website

Section 24102 (2)(B)(ii) of the BIL, requires NHTSA’s website to be ‘easily accessible, navigable, and searchable’ for state performance targets, steps towards meeting those performance targets, program areas and expenditures, amongst other requirements.

NHTSA should:

- Update website to make it possible to compare performance targets, programs, expenditures, and other data across states.
- Provide data as downloadable tables and not just as PDFs.

### **National Priority Safety Program (Sec. 24105)**

#### Nonmotorized Safety

Section 24104(g) updates eligibility of the nonmotorized section to include education on the role of speed and infrastructure in promoting a Safe System approach, as well as shared responsibility under laws relating to bicycling and walking.

NHTSA should:



- Set guidance on programs that qualify for this funding. Engage with active transportation stakeholders on such guidance to identify examples of demonstration projects and other potential projects that could qualify.
- Promote these changes on the NHTSA website and highlight best practices.
- Disseminate the changes to state GHSOs.

### **Crash Data (Sec. 24108)**

This section requires US DOT to "revise the crash data collection system to include the collection of crash report data elements that distinguish individual personal conveyance vehicles, such as electric scooters and bicycles, from other vehicles involved in a crash." This is important as infrastructure solutions may differ between VRU types.

Section 24108(b)(2) also requires US DOT to work with the Centers for Disease Control and Prevention to combine highway crash data and injury health data and produce a national database of pedestrian injuries and fatalities, disaggregated by demographic characteristics. This will be incredibly helpful to get a real accounting for VRU crashes because a police report is not always filed in cases of VRU crashes that result in serious injuries. This will improve the VRU Assessments required under HSIP, and the DOT's National Safety Strategy.

Consistent with the Safe System approach recognizing the dangers of speed, NHTSA should make posted speed limits of roadways where fatal crashes occur easier to access in NHTSA's Fatality and Injury Reporting System Tool. If possible, incorporating observed average speed data for fatal crash locations would also help shine a light on the prevalence and dangers of speeding.

### **Crash Avoidance Technology. (Sec. 24208).**

The bill requires all newly manufactured passenger cars to include forward collision warning, automatic emergency braking (AEB), and for NHTSA to establish minimum performance standards with respect to crash avoidance technology.

When implementing these new requirements, NHTSA should test the ability of crash avoidance technologies to detect vulnerable road users, and create standards that include an ability to detect and respond to VRU, including people bicycling.

### **New Car Assessment Program (Sec. 24213)**

The bill requires DOT to update the New Car Assessment Program (NCAP) by establishing:

- performance test criteria for crash-avoidance technology,
- criteria for rating vehicles on pedestrian, cyclist, and other vulnerable road user safety, and,
- a roadmap for future updates to the NCAP, including meetings and feedback from a diversity of stakeholders interested in vehicle safety.

DOT is required to finalize these updates within one year of the law's enactment.

The performance test criteria for crash avoidance technology should include the ability to detect and respond to VRUs. While we appreciate the inclusion of the rating criteria for VRU, it is important that the two new NCAP criteria interrelate if NHTSA is to truly promote safer cars as part of the US DOT's Safe System approach.

**Headlights** (Sec. 24212)

The BIL requires NHTSA to update standards for vehicle headlights by allowing for adaptive headlamp systems that can adjust beam angles to avoid the eyes of oncoming drivers. The Insurance Institute on Highway Safety found that improving headlamps can reduce automobile-VRU crashes by 25 percent.

NHTSA should continue to move quickly to meet this requirement, and promote standards that reduce VRU crashes.

**Hoods and Bumpers** (Sec. 24214)

The bill requires DOT to consider updates to hood and bumper standards, including the incorporation of advanced crash-avoidance technology and potential harmonization with global standards.

NHTSA should not only meet the requirement of the law but go further and set standards for crashworthiness that at least meet current European standards. Right now, the same make and model car in Europe will result in less injury to the VRU in a crash than the same make and model car sold in the United States involved in a similar crash. Manufacturers know how to build hoods and bumpers that are safer for VRU, and by NHTSA setting standards and requirements, the Biden administration could better meet its goal of achieving a Safe System approach.

**SMART grants** (Sec. 25005)

The Bike League would like to highlight the language in the selection criteria that the project should “improve safety and the integration of transportation facilities and systems” for bicyclists and pedestrians, and the language that any project selected should work to “minimize the impact on the accessibility of any other user group or mode of travel.”

It is critical that USDOT requires applicants to study the effect projects will have on the safety and accessibility of VRU to ensure the program creates a safe system for all road users.

**Prohibit Racial Profiling** (Sec. 25024)

Section 25024 updates the 1906 program by making eligible the development and implementation of programs and public outreach that reduce racial profiling. It also allows the Secretary to use 1906 funds for technical assistance to help states set up and carry out this section.

The League requests NHTSA:

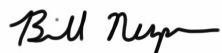
- Update their website to reflect changes to the law (current website includes defunct 2005 SAFETEA LU legislative language, and not 2015 FAST Act Language).
- Identify/contract with a third party to educate State DOTs and Departments of Justice about the program, and promote adoption of the program.
- Promote best practices for not only collecting and analyzing data, but also for working with law enforcement to change policy and practices to reduce and eliminate racial profiling.
  - Highlight and promote Connecticut’s program as a best practice.

- Include guidance that the program can be used to study and address jaywalking, bike helmet, and other traffic law enforcement stops of people bicycling and walking.
- Allow states to include stops and citations issued to vulnerable road users (pedestrians, bicyclists and other road users).
  - A recent Los Angeles Times investigation found that 7 of every 10 bike stops by L.A. sheriff's deputies involve Latino cyclists and that deputies search 85% of bike riders stopped, showing the significant reality and potential of racial profiling in bicycle-related stops to be addressed.
- Consider research on how states can best include stops and citations of vulnerable road users, any challenges or opportunities including these traffic stops would create, and potential changes to the program or the implementation of the program to reduce those challenges.

In closing, we thank you for the opportunity to submit comments and suggestions for the implementation of the BIL. This is an exciting time for those of us passionate about building safe and accessible transportation systems. We look forward to working with you on the implementation of the Bipartisan Infrastructure Law.

If you have any questions regarding our comments please contact Caron Whitaker at [caron@bikeleague.org](mailto:caron@bikeleague.org) or 202-215-3908.

Sincerely,



Bill Nesper  
Executive Director