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PUTTING THE BIPARTISAN INFRASTRUCTURE LAW TO WORK: THE PRIVATE SECTOR PERSPECTIVE

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

NOVEMBER 30, 2022

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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C O N T E N T S

PUTTING THE BIPARTISAN INFRASTRUCTURE LAW TO WORK: THE PRIVATE SECTOR PERSPECTIVE

WEDNESDAY, NOVEMBER 30, 2022

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee, met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (Chairman of the Committee) presiding.

Present: Senators Carper, Capito, Cardin, Kelly, Padilla, Inhofe, Cramer, Boozman, Sullivan, and Ernst.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Good morning. I am pleased to call this hearing to order.

Welcome, all of you. Thank you for joining Senator Capito and our colleagues and our staffs today as our Committee holds, I believe this is our fourth hearing on the implementation of the Bipartisan Infrastructure Bill. It has another name, there is an acronym for it, as there is for everything. I always call it the Bipartisan Infrastructure Bill, and I think I always will.

Today we are going to examine this law from the perspective of stakeholders from the private sector. This hearing is an opportunity for us to explore what is working well, but also to identify some potential improvements for future infrastructure legislation. My colleagues and my staff have heard me say too often, everything I do, I know I can do better. The goal is always perfection, knowing we will never get there, but at least we will be heading in the right direction.

This Committee was privileged to play an integral role in developing the Bipartisan Infrastructure Law. I like to quote Will Rogers; Will Rogers used to say, “If it is true, it ain’t bragging.” This is a great piece of legislation, maybe the most monumental and meaningful infrastructure investment we have made since maybe the interstate system. So we are very, very proud. We are delighted to have had a chance to work together on that.

Shortly after President Biden took office last year, he invited several members of this Committee to a meeting at the Oval Office. During that meeting, we were joined in person by the Vice President and joined in person by our Secretary of Transportation, whom I still call Mayor Pete. The President had Democrat and Republican members from this Committee, and had a long conversation, for over an hour.

Basically, when we left, the President said, “I want you to have on my desk by Easter bipartisan legislation on roads, highways, bridges, and water, wastewater, sanitation.” He said, “I would like you to do that, to work on that.” That is exactly what we did. That is exactly what we did. Ultimately our Committee’s success on crafting and unanimously advancing a robust surface transportation, drinking water, wastewater legislation made the Bipartisan Infrastructure Law possible.

I like to say we laid the foundation. Senator Capito was right in the middle of it all, including extensive negotiations, kind of one on one negotiations with the President of the United States, which I think helped lay the groundwork for what we were later to do.

But when we began working on the highway portion of this law, we sought input from a variety of stakeholders, including many in the private sector, including some in this room. At the time, it was clear to me that our bipartisan legislation would be a vehicle through which we could achieve many important objectives. First, our infrastructure programs could help us reduce emissions from our transportation sector. That is a sector that accounts for nearly 30 percent of greenhouse gas emissions nationwide.

I like to say there are three major sources of greenhouse gas emissions in this country. One is our mobile sources, our cars, trucks, vans. The second is our power plants. And the third is our manufacturing, cement plants, steel mills, that sort of thing. Those are three major sources. This is a big deal, the transportation sector, especially roads, highways, bridges. It is a big deal as we take on the climate crisis.

But new programs could also improve the resilience of our transportation system and reduce our vulnerability to extreme weather, such as heat waves and flooding that we continue to witness across our country and indeed, across the planet. The Tour de France, like some of you, I like to ride bicycles, I like to run. In France they had days that were so hot in Paris this year when they were running the Tour de France, they couldn’t ride on the pavement because the pavement was melting. So this stuff is not just stuff we are making up.

Our highway programs and policies could improve the safety of our Nation’s roads where more than 40,000 people tragically lost their lives last year. I would like to say that number is going down. I know on the pedestrian side it is not. So that is a matter of concern to all of us. But across all these critical objectives and policy goals, I also sought to uphold another key principle, and that is that our infrastructure should help to create a nurturing environment for job creation and job preservation. When I was privileged to be Governor of Delaware, about 400 years ago—it wasn’t that long—I would often say that government should work together with our partners in the private sector to expand opportunities for people to access good jobs. I have said that ever since. I am a recovering Governor, if you will.

That is why I am delighted to be here with my colleagues and all of you as we hear from five representatives of the private sector, businesses and associations. The witnesses gathered before us today represent a range of industries from road builders and contractors to bus fleet operators to material suppliers to electric charging network providers. Your perspectives are critical to not just us on this Committee, but to our Nation.

Why might you ask? The program that our Committee created in the Bipartisan Infrastructure Law and the work that our partners, Federal, State, local agencies are leading to implement, these programs are only part of the equation. The industry is represented here today along with many private sector entities also play pivotal roles in the success of our transportation investments. These businesses contract with public agencies to provide the materials, to provide the work force, to provide the engineering skills, the vehicles, the manufactured products that transportation agencies rely on to see projects through to completion.

As we all know, private sector industries invest in important research and development and innovative approaches to deliver projects and improve mobility, improve safety, and improve sustainability. It is also worth noting that the private sector will benefit tremendously from the new opportunities created by this once in a generation investment in our Nation's infrastructure.

The Bipartisan Infrastructure Law provides more than $350 billion, $350 billion with a B. In a draft of my statement that my staff gave me, it said $350 million. I said, I think it is more than that. It is billion with a B. Don't forget it. Including a 34 percent increase in State formula funds, this increase will translate to more contracts and business opportunities for private sector partners and your employees across the country.

While the private sector businesses that participate in Federal contracts need to be able to operate profitably, they also face important requirements and expectations. When developing the Bipartisan Infrastructure Law, we took care to ensure that our new programs would support congressional priorities. Statutory requirements and regulations will ensure that our infrastructure dollars support domestic manufacturing, provide common sense labor protection, and reduce emissions from vehicles and from materials.

As we implement these programs, I believe it is critical to find the balance between achieving our policy goals while also providing long term certainty so that businesses can engage profitably. I also believe that they will make more progress in advancing our national goals if we allow private sector to participate fully and constructively, driving behavior across industry and leveraging our Federal funding with private sector investments to achieve the greatest possible outcomes.

My hope is that our panel of witnesses today will share their thoughts on how Federal agencies can best structure programs and regulations to achieve these goals of reducing emissions, improving safety, making our infrastructure more resilient, and last but not least, fostering job creation and preservation here at home.

With us today we welcome Jonathan Levy, the Chief Commercial Officer of EVgo, as well as Matt Stanberry, Managing Director of Highland Electric Fleets, Inc. We will also hear from Dave Bauer, the President and CEO of the American Road and Transportation Builders Association. Finally, we are going to hear from Gary Johnson, with whom I served as Governor. I think he was Governor of New Mexico. He has changed a lot.

[Laughter.]

Senator CARPER. A different Gary Johnson, probably.

We are delighted that you have come today.

We are going to hear from Gary, Vice President of Granite Construction Company, testifying on behalf of National Sandstone and Gravel Association.

Last but not least, we will hear from Ali Mills. We are glad to see Ali.

Thanks for bringing these guys with you. We will hear from you, President of Plum Contracting, testifying on behalf of the Associated General Contractors.

We look forward to hearing from all of you.

Before we do that, I am going to turn to Senator Capito.

This has been a big month in the Capito family. Shelley celebrated her 39th birthday earlier this month, and maybe she will share a little about that. Something really important happened in her family yesterday in West Virginia. I am a native of West Virginia, follow West Virginia, love West Virginia, almost as much as she and Senator Manchin do. We have a couple of grown kids, she has two, and one of them is a State legislator who I think made an important announcement. Maybe she will mention what that was. We wish him well.

I used to say, when my time was almost up as Governor of Delaware, they would say, what do you want to next, Tom? I would say, I would like to move to another State and be their Governor, too. People would say, what State would that be? And I would say West Virginia. But I think I won't have a chance to do that.

We wish your son all the best. You are recognized for whatever you want to say. Thank you.

OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator CAPITO. Thank you, Chairman Carper.

I should take that hint and say, yes, congratulations to my son, whose name is Moore Capito, we tend to use the same names. He threw his hat in the ring for the Republican nomination for Governor of West Virginia yesterday.

Senator CARPER. That could be such a great campaign slogan, More Capito.

[Laughter.]

Senator CAPITO. As the Chairman has said, we just passed the 1 year mark since the President signed the IIJA. And we promised the American people that this would deliver results by improving and expanding our Nation's core transportation infrastructure.

We are really starting to see some of the tangible benefits. Roads and bridges are underway. We have a lot of those orange and white cones going in West Virginia. States have received a second round of historic levels of funding through their core highway formula funds. And discretionary grants are beginning to be awarded.

But there is still so much work to be done. Agency deadlines are piling up. And we are still waiting for significant sections of the law to be implemented by DOT, mainly the project delivery title to cut down delays and red tape.

This Committee has the responsibility for proper implementation of the IIJA. And we have had several hearings with others to see how that is going.

This is an important voice we are going to hear today in this conversation. Our panel represents, as the Chairman said, a diverse range of individuals. We thank all of you for coming. You all are the ones who have the boots literally on the ground. Our witnesses represent companies that are being awarded projects funded by the IIJA, which means they are perfectly positioned to provide the Committee additional, real world perspectives on how things are going.

Just yesterday, this Committee voice voted out in favor of Shailen Bhatt's nomination to be the Administrator of the Federal Highway Administration. This is critical, I think, and a critical position for the implementation of the IIJA. The agency has been without a Senate confirmed administrator for far too long. And if he is confirmed by the full Senate, which I expect that he will be, I hope that he will grab the reins quickly and move to approve some of the issues that have already come to light.

Through his leadership, I expect that the agency will begin to execute the law as Congress intended, which he committed to do in front of this very Committee. Through public hearings and private conversations with DOJ leadership and letters, certain members of this Committee have called on FHWA to stop pursuing policies that outright contradict the IIJA's statutory text.

This includes the December 16th FHWA memorandum to staff entitled "Policy on Using the Bipartisan Infrastructure Law Resources to Build a Better America," and various other programmatic guidance documents. FHWA should instead more expeditiously work to implement all provisions of the law as written, the project delivery title including the One Federal Decision policy.

The agency should focus on the bipartisan enacted provisions of the IIJA that will address climate change, and there are many in there, and improve the resilience of our transportation infrastructure instead of undertaking unauthorized, unilateral partisan actions like a rulemaking to establish a greenhouse gas emissions performance measure and associated targets for State DOTs and metropolitan planning organizations. To me, as I read that, as I say that, that just is delay, delay, delay.

Today, I am also interested in how the current construction landscape is impacting the historic investment provided. Inflation is still high and impacting supply chain challenges. With this looming rail strike, this is another whole issue that I think puts a lot of pressure on the system.

I continue to hear that labor shortages are making it hard for companies to bid on projects and then move them through completion on time and on budget. With the recent expiration of DOT's waiver of Buy America requirements for construction materials, I understand there are inconsistencies among States on the implementation of that policy. I certainly had that conversation myself with our constituents in West Virginia.

I look forward to hearing from you what programs and policies are most beneficial to put this investment to work, what is going well regarding implementation, what isn't going well, what is making it more challenging to bid on projects, and bringing them to conclusion. The IIJA, the Bipartisan Infrastructure package, included unprecedented investments to address the needs of our Nation's core infrastructure in the transportation sector. Proper implementation is the only way that the funding will uphold those promises that were made to the American people with its passage.

Thank you so much for being here. I look forward to your testimony.

Senator CARPER. Senator Capito, thank you for those comments.

Thank you for the great work you did, and frankly, just about everybody on this Committee and our staffs, on the Bipartisan Infrastructure bill.

I also way to say thanks for helping move through a number of nominees yesterday, including that of Shailen Bhatt to be Federal Highway Administrator. We waited on this current Administration way too long to nominate somebody of his quality. He has just excellent, great experience. Hopefully, we can move that while we are still in session this year. That would be great.

Now we are going to turn to our witnesses. And I am going to ask that each of you keep your statements to 5 minutes, and your full written testimony will be entered into the record, as you know.

We are going to start with Matt. Matt Stanberry, Managing Director of Highlands Electric Fleets.

Mr. Stanberry, you may proceed with your statement. Welcome. We are glad you are here. Thank you.

STATEMENT OF MATT STANBERRY, MANAGING DIRECTOR, HIGHLAND ELECTRIC FLEETS

Mr. STANBERRY. Chairman Carper, Ranking Member Capito, and distinguished members of the Committee, thank you for the opportunity to testify before you today.

I work for a company named Highland Electric Fleets. Highland is a fleet electrification company focused on helping governments electrify their fleets. Today, we specialize in school bus fleets.

We recognized back in 2018 that communities wanted cleaner alternatives to diesel school buses, and major manufacturers were making good quality electric school buses right here in the United States. At the same time, we saw that adoption was slow because the vehicles cost more up front, and the process of electrification felt too complicated and risky for school transportation directors. It wasn't a technology problem, but rather a business model and access problem.

So we built a company designed to help schools address those specific challenges in a public-private partnership. To solve the complexity, we do everything required for a district to electrify. To make it affordable, we leverage values that electric buses can provide but are hard for districts to capture without the help of specialized private companies.

For example, we help them capture the savings from fuel and maintenance, tax depreciation, volume purchasing incentive programs, and a number of other areas. We are now the largest buyer of electric school buses in the country, all of which, I would note, come from domestic manufacturers. And we have the largest project in North America, just up the road from here, in Montgomery County Public Schools in Maryland.

Our pipeline of projects and partnerships underway or in development covers over 20 States and Canadian provinces, and our district partners range from small, rural communities to dense urban environments.

Our company is interacting with the Bipartisan Infrastructure Law in multiple ways. I will center our comments today on Section 71101's Clean School Bus program. It is well underway, and it is our area of expertise.

The passage of the law was a watershed moment for school bus fleet electrification, as the Federal Government is uniquely positioned to do three important things. One, build nationwide awareness and knowledge about the technology. Two, accelerate the development of a resilient market for adoption by encouraging private sector participation and competition. And three, ensure that all communities have access to the technology.

Of course, success will require effective implementation by the Environmental Protection Agency, which rolled out the first version of the program earlier this year. At the outset, I would like to congratulate the team at EPA for doing the hard work of standing up a major Federal incentive program in short order. It really is no easy feat.

I am pleased to report that our business has seen a large uptick in awareness and interest in electric school bus technology based on the program's first round. Building awareness and education is critical in all technology transitions. So this result alone is a significant victory for the Bipartisan Infrastructure Law. I would like to commend the members of the Committee, Congress at large, and the Administration for making that possible.

That said, we see a central challenge in the approach to date to the incentive program that will prevent the Clean School Bus Program from fulfilling all the goals that Congress laid out unless some significant changes are made going forward. Specifically, the incentive structure was not designed to sufficiently leverage private sector investment in competition to both drive down project costs and accelerate deployment.

Going forward, three things will be required: Moving away from lottery based systems that discourage competition and create uncertainty; reducing incentive levels to put downward pressure on project cost; and encouraging project cost share and private sector participation.

With that, I will close by noting that while my testimony focused on the Clean School Bus Program, it is likely that the big themes have relatively widespread applicability. As the Federal Government rolls out new programs, especially those dealing with technology transitions, it should use its unique platform to build education and awareness, and it should design the programs carefully to leverage the capacity of the private sector. In this way it can create momentum so that the private sector can help fund the transition going forward.

Chairman Carper, Ranking Member Capito, and members of the Committee, thank you again for the opportunity to testify before you today and provide some private sector perspective on putting the Bipartisan Infrastructure Law to work.

I look forward to engaging with you on any and all questions.

[The prepared statement of Mr. Stanberry follows:]

Written Statement for the Record

Matt Stanberry

Managing Director of Market Development

Highland Electric Fleets

Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective

Before the Senate Committee on Environment and Public Works

November 30, 2022

Introduction to Highland

Chairman Carper, Ranking Member Capito, and members of the Senate Committee on Environment and Public Works, thank you for the opportunity to testify before you today. My name is Matt Stanberry. I have spent the last twenty years in the advanced transportation and energy industries and am currently the Managing Director of Market Development at Highland Electric Fleets. Highland Electric Fleets ("Highland," "we") is submitting this testimony regarding the private sector's experience with implementation of the Infrastructure and Investment Jobs Act (IIJA).

Highland's work centers around partnerships with municipalities and other governments to enable the electrification of vehicle fleets. We recognized in 2018 that electric vehicle technology was underutilized in government fleets, including the large network of school bus fleets, and that although the existing electric vehicles could meet most school district needs, district adoption lagged behind both the capacity of the vehicles and the motivation of communities to electrify. We set out to bridge the gap between technological capability and community deployment, using our expertise in a public private partnership to eliminate the barriers to better performing vehicles, improved health, and a cleaner environment.

Today, our business is focused on providing electric school buses (ESBs) to school districts and/or their third-party managed fleet contractors through an electrification-as-a-service (EaaS) model. EaaS is a contractual mechanism offered by several companies, including Highland, that provides ESBs, along with some combination of planning, financing, charging equipment, infrastructure, training, and other support and operational services. The EaaS model enables ESB acquisition and operation at a cost that is equivalent to or better than traditional diesel total cost of ownership. The EaaS provider makes that possible by leveraging volume purchasing; asset depreciation; fuel and maintenance savings; grant, rebate, and utility programs; and other values ESBs can provide. As a result, EaaS is the only ESB acquisition model available today that drives project costs down and fundamentally reduces the amount of incentive funding necessary per bus to reach affordability. Furthermore, the model allows the school district to benefit from the expertise of the EaaS company, which takes on all the activities involved in electrifying the fleet and assumes any associated technology risk. While EaaS has only been available to school districts for a couple years, the market has responded rapidly given its benefits. Over the past two years, roughly a third of all ESBs put under contract in the United States were in EaaS contracts.

Highland is the largest provider of EaaS services, and we are now the largest buyer of ESBs in the country. We are working with districts across the United States and Canada on electrification projects, including the largest project in North America, which is serving Montgomery County Public Schools (MCPS) in Maryland. Through our partnership with MCPS, the school district fleet will deploy 326 ESB over four years, putting the district on a path to 100% fleet electrification. MCPS demonstrates that electrification at scale is feasible today, even in the nation's largest fleets.

In addition to leading on deployment scale, our team is at the cutting-edge when it comes to helping districts leverage the technology's capabilities. For example, our project in Beverly, Massachusetts was the first in the country to place an ESB into a utility's commercial vehicle-to-grid (V2G) program whereby the utility compensates the school for allowing its bus battery to provide power back to the grid during times of need. Today, we are bringing our leadership on ESBs to projects and partnerships from Florida to California and from Texas to Illinois and all points in between. Our project pipeline now stretches across more than 20 states and provinces. These projects include all kinds of fleets, from large fleets in dense communities like MCPS to small fleets in rural locations like Hardin County in rural southern Illinois, where we are working with the fleet of Community Unit School District #1.

Feedback on the Infrastructure Investment and Jobs Act

Several elements of IIJA impact Highland, including SEC. 71101. Clean School Bus Program., and SEC. 40541. Grants for Energy Efficiency Improvements and Renewable Energy Improvements at Public School Facilities. Since its rollout is well underway and it is an area of expertise, this testimony centers on the Clean School Bus Program (CSBP), and its impacts on the ESB market as we have witnessed and experienced them.

The passage of the IIJA was a watershed moment for school bus fleet electrification as the federal government has a critical potential role to play in the market. Specifically, the government has the unique opportunity to build nationwide awareness and knowledge about ESBs, accelerate the development of a resilient market for ESB adoption by encouraging private sector participation, and ensure that all communities have access to the technology. The CSBP, as written by Congress, can successfully serve this role if U.S. Environmental Protection Agency (U.S. EPA) provides thoughtful and effective implementation.

We have been closely tracking the implementation of the CSBP since its inception. We assisted many districts with the 2022 rebate program application process, were listed as the private fleet partner on over 50 applications, and are now working in various capacities with a number of school districts that will receive funds.

We commend U.S. EPA for doing the hard work of standing up a major program in short order, communicating the details of the program to a wide swath of the school districts nationwide, and providing support through webinars, conference presentations, regional outreach, etc. The CSBP has had a significant impact on our industry and our work, and we have seen a large uptick in awareness and interest in the ESB technology.

In cases of technology transition, it is difficult to overstate the importance of building awareness and education around the new technology. While interest in ESBs has built organically over the past several years, the IIJA and the CSBP has generated broad awareness and knowledge building that has motivated action in places with little prior experience. For example, there are only four ESBs operating in Missouri to date, but districts in the state put in a significant number of rebate applications and the state had the highest number of individual district awardees of any state. The awareness, knowledge, and interest will only build on itself, as there will soon be an ESB in nearly every state and territory in the United States. Our experience shows that exposure to the technology quickly results in additional adoption. Current ESB technology is sufficient to cover almost any school bus route in the county, and the CSBP is showing districts and transportation directors nationwide that this is a reality. Given the importance of building awareness and education, this result alone is a significant victory for the IIJA, and Congress and the Administration should be commended for their efforts in making it possible.

With all of that said, as U.S. EPA itself anticipated, we believe that there were real challenges in the first iteration of the CSBP and that the Agency needs to make some significant refinements in order to realize Congress' objectives. Specifically, we believe that U.S. EPA needs to focus on market economics and leveraging private sector competition to drive down project costs and accelerate deployment. Success will require 1.) A program structure that focuses on accelerating deployment by encouraging competition and reducing uncertainty; 2.) Incentive levels designed to put downward pressure on project costs; and (3) An emphasis on encouraging cost share and private sector participation.

Establishing a Program Structure that Accelerates Deployment – In IIJA, Congress called on U.S. EPA to design the CSBP to be a competitive program that would maximize the impact of program funding and the number of buses deployed nation-wide. As such, a successful program design would encourage the development of quality project proposals from school districts, incentivize industry to compete on price and quality in supporting those district projects, limit uncertainty that can reduce program participation, and avoid designs that can lead to periodic freezes in market activity. In the first iteration of the CSBP, U.S. EPA, which faced real limitations in staffing and resources at the outset of the program, set up a lottery program as it was a mechanism the Agency had used previously. Unfortunately, lotteries are inherently uncompetitive since projects are chosen at random. Since there is nothing an applicant can do to improve its chances of success and the probability of random selection are low, lotteries both create large amounts of uncertainty for school districts and the businesses supporting them and discourage the development of high-quality applications. Lotteries also create lengthy freezes in market activity because awards happen all at once and school districts are incentivized to hold off on signing new contracts until award announcements take place. We saw a number of these inherent challenges with lottery programs manifest in the initial implementation of the CSBP.

Going forward, U.S. EPA is considering alternative program designs, and we strongly recommend that the Agency does not use a lottery approach again at any point in the future. It is notable that there are several other incentive designs that have been used successfully by states to support cleaner school bus adoption, and to our knowledge, none of them have used a lottery system. Highland recently provided U.S. EPA with detailed recommendations regarding program designs that can address the issues identified in the first iteration of the CSBP.

Designing Incentive Levels to Drive Down Costs – Experience across several economic sectors has shown that incentive levels are a powerful tool in shaping market economics. Incentives that are too high perversely encourage price setters to drive prices up beyond levels supported by market fundamentals. Lower incentive levels that are still economically significant spur competition and push prices downward. The decline in prices is magnified when the implementing body establishes a clear schedule of declining incentives over time. A declining schedule signals to industry that downward price pressure will continue over time and provides the industry with time to plan accordingly. A schedule also pulls market activity forward, as participants chase the higher value incentives available earlier in the schedule.

In its initial approach under the CSBP, U.S. EPA established incentives that were too high, so moving forward it will be important for the Agency to both lower those incentives and establish a clear schedule of decline over time. Doing so will not only put downward pressure on prices, but also simultaneously help the Agency maximize vehicle deployment per dollar of incentive and encourage cost share from private companies, states, school districts, and utilities - a topic covered more thoroughly below. It is important to note that U.S. EPA can reduce incentive levels overall while still supporting the higher needs of low-income communities by establishing higher incentives and dedicated budgets for those communities.

Encouraging Cost Share – In IIJA, Congress provided U.S. EPA with the ability to prioritize projects that leverage outside financial resources to provide cost share. Program approaches that emphasize cost share make intuitive sense. They would help the Agency pursue its goals of maximizing deployment under the program and accelerating the development of a resilient market for deployment. A resilient market will in turn enable deployment far beyond the reach of the CSBP itself. By emphasizing cost share and making smaller, but still economically significant incentives available (as outlined above), U.S. EPA can draw the investment of private companies (via public private partnership arrangements), states, school districts, utilities, and others as they see the opportunity to leverage federal funds to achieve their objectives. In drawing capital from many sources into school bus electrification, the Agency can accelerate the development of a resilient market that is not dependent on any single source of capital.

The federal government was able to do just this with renewable energy by providing approximately thirty percent of project funding through the tax code, which encouraged all interested parties to come forward with capital to leverage those dollars. Renewable energy projects have flourished as a result. The same effect is possible here, but it requires U.S. EPA to encourage cost share and reduce incentive values. While the Agency did not reward cost share in its first iteration of the CSBP, it is explicitly considering doing so moving forward, and we strongly believe that this is required for the long-term success of the program.

Closing

Our team at Highland is honored by the invitation to speak today on behalf of all our partners regarding this transformational piece of legislation and the groundbreaking work we are all undertaking together. School bus electrification is one of the rare areas in policy making where there is so much value for everyone involved. These vehicles protect the health of the next generation, provide better performance to school bus drivers, decrease carbon emissions, support the electrical grid, and provide all these values in the context of one of the only truly ubiquitous forms of public transportation in the country. By enabling the deployment of ESBs everywhere, IIJA is making vehicle electrification a reality everywhere from Boone County, WV, to New York City, to the Ojibwe Charter School in Michigan's Upper Peninsula. Furthermore, because ESBs are predominantly manufactured in the United States, IIJA is supporting domestic manufacturing and the American workers who carry it out in Oklahoma, Georgia, North Carolina, Colorado, West Virginia, Ohio, California, and beyond.

While our testimony necessarily focused on the CSBP, it is likely that the big themes have relatively widespread applicability. As the federal government rolls out new programs, especially those dealing with technology transitions, it should use its unique platform to build education and awareness, and it should design the programs to leverage the capacity of the private sector. In this way, it can create momentum so that the private sector can help fund the transition going forward.

Chairman Carper, Ranking Member Capito, and members of the committee, thank you again for the opportunity to testify before you today and provide the private sector perspective on putting IIJA to work. I look forward to engaging with you on any and all questions.

Senator CARPER. Thank you. You have 18 seconds to spare, that is great. Thank you for that testimony and for your delivery. Thanks for joining us today.

On your left, Matt, is Jonathan Levy from EVgo.

Did I get it right, Jonathan?

Mr. LEVY. Yes, sir.

Senator CARPER. Mr. Levy, we are going to ask you to go ahead and proceed with your statement. Your entire statement will be made part of the record. Please proceed.

STATEMENT OF JONATHAN LEVY, CHIEF COMMERCIAL OFFICER, EVGO

Mr. LEVY. Thank you, Chairman Carper, Ranking Member Capito, members of the Committee. Thank you for this opportunity to share EVgo's perspective on the impact of the Bipartisan Infrastructure Law for the electric vehicle sector.

Since you started by welcoming everybody in the family way, maybe I will start by wishing my dad a happy birthday today.

Senator CARPER. How long has he been your dad?

[Laughter.]

Mr. LEVY. My whole life. He is very good at it.

Senator CARPER. Give him our best.

Mr. LEVY. Thank you, sir. I will.

My name is Jonathan Levy, and I am EVgo's Chief Commercial Officer. EVgo has been a first mover in EV charging with over a decade of experience owning and operating fast chargers. Fast chargers, as you all know, can charge any electric vehicle in about 15 to 45 minutes, depending on the car's capabilities.

EVgo's network spans more than 850 fast charging locations across more than 30 States and has been powered by 100 percent renewable electricity since 2019.

This Committee should be lauded for its leadership on transportation electrification, especially through the up to $7.5 billion zero emissions infrastructure funding included in the Bipartisan Infrastructure Law, especially the NEVI program or the $5 billion in formula funds.

Federal policy is a powerful tailwind to support EV adoption. And the Bipartisan Infrastructure Law is one of multiple complementary policy efforts accelerating the deployment of charging infrastructure across the U.S. EVgo strongly supported passage of the Bipartisan Infrastructure Law and other EV incentives that were included in the Inflation Reduction Act.

If you will pardon the food metaphors before lunch, we often hear about a chicken and egg problem when it comes to EVs and charging infrastructure.

Senator CARPER. You are talking to a Committee that is chaired by someone who has a State with 300 chickens for every person. So feel free to use that one.

Mr. LEVY. My aforementioned birthday boy father was in the chicken business. I am familiar with Delaware's farming there.

At EVgo, we are not big fans of that metaphor. The chicken and the egg implies that we are starting from scratch and that something has to go first. But we have a base today of installed chargers and excellent EV models available for consumers. Instead, we like to talk about peanut butter and jelly, enough charging stations for people to buy EVs with confidence and enough EVs using that infrastructure to support the sustainable build out of even more of it.

EVgo encourages this Committee to continue advancing complementary policies that support infrastructure and vehicles in tandem. And we are grateful that Congress and the Administration did just that by pairing the charging investments from the Bipartisan Infrastructure Law with consumer incentives in the Inflation Reduction Act, ambitious fuel economy standards as proposed by NHTSA and other policies like EARNS.

As States are on the cusp of awarding funds from the Bipartisan Infrastructure Law, we also have a few recommendations to share. First, we appreciate that Congress and the Administration focused Bipartisan Infrastructure Law investments on fast charging, starting with corridors. We recommend that in addition to highway build outs, States move quickly to also support community charging projects. The definition of when highway corridors are built out was ambiguous, and we recommend the obligation of funds as a practical milestone.

Second, Congress wisely designated electrification investments in the Bipartisan Infrastructure Law to leverage and not supplant private sector dollars and experience. Accordingly, States should adopt best practices and learnings from past charging programs and experienced players in the market. Specifically, States should use transparent, points based scoring rubrics, rather than over specifying specific program criteria.

NEVI funds present an opportunity to make certain projects pencil earlier than they otherwise might. Extraneous requirements such as bundling multiple sites in the same corridor may undermine that math and reduce the pipeline of valuable projects that can apply. The Administration has implemented a robust public comment process, and while State NEVI plans have been approved, the proposed minimum technical standards have not yet been finalized.

It is crucial that FHWA resolve problematic elements of the proposed standards, especially eliminating regulated rates of return and requirements for specific versions of technical protocols. NEVI guidance included an ambitious goal of energizing charging stations within 6 months of obligation of funding. To meet that goal, States will need to work with stakeholders from utilities to local permitting agencies to address existing deployment bottlenecks.

Finally, while we support the goals of Build America, Buy America, and are actively working with our suppliers on their onshoring plans, the current state of the supply chain necessitates a longer waiver which currently expires at the end of this year. Based on EVgo's analysis in the marketing, the waiver at least through the end of 2023 is needed, as the coming domestic supply will not meet the demand for federally funded projects.

With these improvements and complementary programs, the implementation of the NEVI funds from BIL will deliver critical support to the burgeoning EV ecosystem. As strong believers in the vision of electric for all, EVgo is grateful to this Committee for your leadership promoting the acceleration of an ongoing and just transition to EVs. Congress and the Administration have acted boldly with both BIL and IRA, and we commend all of you for that action. We are looking forward to seeing the vision of this Committee become a reality as States start to award funds.

I look forward to answering any questions you may have.

[The prepared statement of Mr. Levy follows:]

EVgo®

FAST CHARGING

Written Testimony of Jonathan Levy

Chief Commercial Officer, EVgo

"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"

Senate Committee on Environment and Public Works

United States Senate

November 30, 2022

Introduction

Chairman Carper, Ranking Member Capito, Members of the Committee, thank you for the opportunity to appear today to share a private sector perspective on the impact of the Bipartisan Infrastructure Law (BIL) for the electric vehicle sector.

My name is Jonathan Levy, and I currently serve as EVgo's Chief Commercial Officer. EVgo is one of the nation's largest public fast charging networks for electric vehicles (EVs). We currently own and operate more than 850 fast charging locations across more than 60 metropolitan areas and 30 states, with more than 500,000 customer accounts. We are aggressively expanding our public fast charging network as we speak, with approximately 4,500 stalls currently in our active engineering and construction pipeline. Additionally, EVgo offers a variety of charging solutions to other partners, from behind the fence fleet solutions leveraging EVgo Optima to white label projects through our EVgo eXtend offering. Since 2010 EVgo has led the way to a cleaner transportation future, and our charging network has been powered by 100% renewable energy since 2019.

First, I would like to applaud this committee for its leadership in supporting the electrification of the transportation sector. Transportation electrification will reduce greenhouse gas emissions, create good paying jobs across the country, and provide cleaner air for all Americans. This committee's work, including its first-ever transportation reauthorization climate title, will help accelerate the buildout of the electric vehicle charging infrastructure needed to enable this transition. The $5 billion National Electric Vehicle Infrastructure program, and accompanying $2.5 billion Charging and Fueling Infrastructure program, are keys to enabling the installation of additional charging stations across the nation. EVgo strongly supported passage of the BIL as well as consumer vehicle incentives that were included in the Inflation Reduction Act (IRA).

Secondly, I would note that the investments spurred through BIL and IRA are not starting from scratch; they are building upon a base of installed infrastructure and deployed vehicles in operation (VIO) that need to continue to grow in a complementary fashion. In addition to the more than 2,000 fast chargers at EVgo's 850+ locations, there are thousands more fast chargers around the country offered by our competitors, and full battery electric vehicles (BEVs) cleared 6%[1] of U.S. vehicle sales in the third quarter of 2022, up from less than 2% in 2020[2]. That being said, it is still early days for this industry, and public policy is critical to enabling the market to develop more rapidly.

The funding programs in BIL will induce a quicker buildout of EV infrastructure, but they alone cannot meet the Administration's goal of building 500,000 chargers by 2030[3] and the broader aspiration of an all-electric future. The private sector must also come to the table with real commitments and real expertise to amplify federal dollars and ensure a nationwide charging network is operated and maintained to deliver for drivers over the long term. I'm pleased to report we are doing just that. EVgo announced a partnership this year with Pilot Company and General Motors to install 2,000 high-powered chargers at up to 500 Pilot and Flying J locations in more than 40 states[4]. As noted at the time of announcement, that collaboration was designed "to combine private investments alongside intended government grant and utility programs to help reduce range anxiety and significantly close the gap in long-distance EV charger demand." EVgo is also well underway on a separate partnership with General Motors to install an additional 3,250 fast charging stalls and continues to work with Nissan and other partners to support expanded buildouts in priority markets[5]. Our industry is maturing by leaps and bounds and is excited to partner with states to execute on Congress and the Administration's charging deployment programs.

As the committee examines BIL one year in, EVgo appreciates the opportunity to share its perspective on the impact of the law on the EV charging industry. In addition to our more than ten years of experience as an owner-operator of EV chargers, EVgo has been a first mover and a first learner in infrastructure program design by participating in numerous state infrastructure programs. Based on that experience, this testimony shares our perspective on the key opportunities and remaining challenges from the charging investments in BIL. Specifically, we believe:

- Federal policy is a powerful tailwind to support EV adoption, and BIL is one of multiple complementary policy efforts to enable the transition to EVs;

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[1] https://www.autonews.com/retail/ev-registrations-us-57-through-september
[2] https://evadoption.com/us-ev-sales-share-reaches-7-in-q2-2022-new-data-now-available%ef%bf%bc/
[3] https://highways.dot.gov/newsroom/biden-harris-administration-announces-all-50-states-dc-and-puerto-rico-have-submitted
[4] https://www.evgo.com/press-release/evgo-announces-evgo-extend-project-to-deploy-high-power-fast-charging-access-to-drivers-across-the-us/
[5] https://www.evgo.com/press-release/general-motors-evgo-boost-build-plan-high-power-fast-chargers-across-us/

- BIL will significantly expand fast charging availability on corridors and in communities thereby helping to accelerate the transformation to a decarbonized transportation future;
- New public funding programs should leverage investment and expertise from the private sector;
- As program rules are finalized and future years of funding are obligated, U.S. and state DOTs should continue to adopt best practices and learnings from past State Energy Office and other charging programs to bolster new state DOT programs;
- Investments should be accompanied with technical support and assistance for local governments to meet deployment timelines; and
- Additional leadership by the federal government is needed to improve utility energization timelines and address supply chain challenges. BIL is catalyzing investments across the value chain, including in domestic manufacturing; however, FHWA must set a pragmatic Buy America implementation schedule, with waivers for EV charging at least through 2023 to reflect the current market realities.

We also plan to share perspective on two other transportation electrification policies:

- The value of the Renewable Fuel Standard (RFS) finalizing a pathway for renewable electricity from charging events (E-RINs); and
- Key implementation provisions from the Inflation Reduction Act that support transportation electrification.

BIL's infrastructure programs are part of a comprehensive policy effort to support transportation electrification.

BIL's $7.5 billion in funding for charging and alternative fuel infrastructure is a major step towards expanding charging infrastructure to support a growing EV market across the United States. If properly implemented, it will create thousands of well-paying jobs in manufacturing, installing, operating and maintaining charging stations in every state. But to be most effective, infrastructure policy should be paired with actions to stimulate EV sales on the consumer side. Together, they work in tandem to bolster the creation of sustainable U.S. jobs across the EV value chain. At EVgo, we think of this as moving beyond "the chicken and the egg" to taking a "peanut butter and jelly" approach to infrastructure and vehicle availability. The goal should be to have sufficient public charging infrastructure to enable EV adoption, and a sufficient quantity of vehicles using that infrastructure to support the build out of even more of it.

We are grateful that Congress and the Administration recognized the need for those complementary policies of both charging infrastructure and consumer incentives to bolster EV sales. In this way, the charging investments from BIL are set up for long-term success through complementary vehicle purchase incentives via key tax provisions through the Inflation Reduction Act and ambitious fuel economy standards proposed by the National Highway Traffic Safety Administration[6]. From the private sector perspective, the key is that EV adoption occurs in tandem with deployment of charging infrastructure, as a sustainable public charging industry needs a robust EV market to drive usage and reinforce the unit economics that support additional buildout.

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[6] https://www.nhtsa.gov/press-releases/usdot-announces-new-vehicle-fuel-economy-standards-model-year-2024-2026

We also applaud Congress for enacting the consumer credits for EVs with equity in mind, ensuring EV adoption will be possible for low- and moderate-income families by bolstering a strong secondary market for electric vehicles. This will ensure that all Americans – regardless of income level – can enjoy the long-term maintenance and fuel savings that an EV provides. In addition to the consumer incentives for electric vehicles, Congress wisely also created incentives for fleet and commercial vehicle electrification, which can have outsized emissions and clean air benefits for the communities they operate in that have historically borne the brunt of air pollution.

BIL will spur the deployment of thousands of additional fast chargers during this decade.

EV adoption in the United States is reaching tipping point levels, with EV sales reaching 6 percent last quarter, more than triple Consumer demand has shattered the myth that EVs are only interesting to a tiny slice of the driving public, with reservations and waitlists for the most popular models demonstrating that more and more drivers are clamoring for EVs. Automakers are investing to meet this surging interest and have announced plans to spend more than $1.2 trillion by 2030 to develop and manufacture EVs[7]. They are projecting EVs to make up more than 50 percent of vehicle production in 2030, in line with the Administration's goals[8]. Drivers are already seeing the benefits of this investment, with new models like the Chevy Silverado EV, Ford F-150 Lightning, Toyota bZ4X, and Nissan Ariya already on the road or beginning production soon.

As these new vehicle models are coming to market, EVgo is rising to the challenge to ensure that consumers have access to reliable and convenient charging infrastructure – with an eye toward equity – so we can truly enable mass adoption. We know that more fast charging infrastructure will be needed in all communities and geographies to enable ubiquitous EV adoption.

Unlike alternating current Level 1 charging from a standard wall outlet, or Level 2 charging from a 240-volt circuit, direct current fast chargers can charge a car in just 15-45 minutes[9]. Level 1 and Level 2 play important roles in the charging ecosystem as they take advantage of long idle times for most vehicles. However, fast charging enables drivers to charge in minutes instead of hours and is crucial to enable charging both in communities for drivers on the go, as well as along corridors for long-distance trips.

Thanks to the wisdom of Congress, the EV investments from BIL, particularly NEVI, are focused on fast charging. These chargers are capital intensive and also have high operating costs, including but not limited to 24/7 customer service, electricity, network operations, and maintenance. In this nascent stage of EV adoption, public funding through programs like NEVI incent investments to deploy charging infrastructure, but should also continue to help with ongoing operating costs, as has been authorized by Congress. These operating costs include electricity costs, which can often include punitive demand charges, as well as maintenance efforts which are key to reliability to increase confidence in the technology– and that can help bolster infrastructure access in rural or low-income communities.

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[7] https://www.reuters.com/technology/exclusive-automakers-double-spending-evs-batteries-12-trillion-by-2030-2022-10-21

[8] https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/

[9] Actual charging speed depends on vehicle's charging capability

Recommendation: After the buildout of the interstate corridor charging network, states and the Federal Highway Administration (FHWA) should pivot to community charging. Specifically, FHWA should certify corridors are fully built out by states once funds are obligated for those projects.

NEVI's initial focus is on a nationwide network of corridor fast chargers along highways to enable long distance road trips, and to assuage range anxiety. A nationwide network of public charging provides consumers with the confidence necessary to purchase or lease an EV, knowing that charging will be there when they need it.

It's true that fast, reliable charging is needed to enable long distance driving, but given that the average American only drives 30 miles[10] per day, public fast charging also has a critical role to play in community locations, especially for renters, multifamily housing residents, and others without access to home charging or even dedicated parking. EVgo has customers across geographies and demographics that leverage fast charging in different ways, but for virtually all current and potential EV buyers, confidence that there is accessible and reliable fast charging near where they live is critical to their willingness to make an EV purchase.

The first iteration of NEVI funding has been targeted to help to assuage the range anxieties of EV drivers on trips or between cities and across the country, but attention is also needed on community charging to ensure an equable transition to a decarbonized transportation system for all Americans. In fact, with nearly ten years of operational experience, EVgo has found that the vast majority of public fast charging usage is in denser, urban and suburban areas where not every home has a driveway, attached garage, or in many cases any dedicated parking. This means that those who cannot charge at home need a place to charge away from home if EV penetration is to grow across all demographics, and not just those of single-family homeowners. In fact, the International Council on Clean Transportation[11] indicates that more than half of EV owning apartment dwellers in the U.S. rely on public charging sites for their needs. A study of EV charging data from the University of California – Los Angeles[12] similarly found that residents of multifamily housing units rely largely on public charging for their refueling needs.

At EVgo we believe in a vision of Electric for All where everyone has access to convenient, reliable charging infrastructure. Encouraging a focus on community charging will support this mission and the Administration's larger Justice40 and equity goals, by enabling EV ownership for those who aren't able to charge at home. For these reasons, and to enable a just transition to a decarbonized transportation system, EVgo recommends that community charging be a priority upon completion of FHWA corridors.

Given the importance of the community charging use case to ubiquitous charging access, it is no surprise that EVgo and other charging companies are eager for the launch of the community charging program within the Charging and Fueling Infrastructure Program drafted by this committee. But in addition to this set-aside, FHWA should work with states to prioritize community charging with remaining NEVI formula dollars to ensure benefits of BIL are seen by those without home charging as I detailed above. To do this, FHWA must provide further guidance on the statutory requirement that funds can only be spent on

[10] https://aaafoundation.org/wp-content/uploads/2021/04/21-1101-AAAFTS-American-Driving-Survey-Fact-Sheet_v3.pdf

[11] https://theicct.org/sites/default/files/publications/US_charging_Gap_20190124.pdf

[12] https://innovation.luskin.ucla.edu/wp-content/uploads/2021/03/Evaluating-Multi-Unit-Resident-Charging-Behavior-at-Direct-Charging-Behavior-at-Direct-Current-Fast-ChargersCurrent-Fast-Chargers.pdf

corridors until they are "fully built out" with stations located every 50 miles. Based on the analysis of multiple state Departments of Transportation (DOTs), it will be feasible for some states to complete the buildout of their alternative fuel corridors in the first year of the NEVI program. However, FHWA has yet to issue guidance on how it will certify this buildout and allow states to build off corridors, and in doing so, expand funding opportunities to community locations.

FHWA should adopt a rule that allows states to launch community programs expeditiously. This could be accomplished by certifying built-out corridors when funds are obligated for charging sites rather than waiting until the charging station is fully built. If FHWA does not allow states to begin their community charging programs until a corridor build out is completed, it could take 2-4 years for community programs to begin implementation, as fast charging stations have development cycles of up to 18 months given complexities with securing locations, utility coordination and permitting.

On top of regular development timelines, EVgo expects that many state Departments of Transportation, which will be implementing EV charging programs for the first time under NEVI, may encounter stumbling blocks that could further delay implementation. In EVgo's experience at the state level with funding programs, we have seen unintentional program design flaws that lead to delays from when a solicitation is first opened until when a charging station location is ultimately complete. Further, given the large amount of interest in NEVI, applicant attrition is a real possibility as many new entrants to the EV charging space potentially will receive awards but may not be able to meet their obligations with the state DOTs; more than a hypothetical, similar outcomes have happened in past California Energy Commission corridor funding programs as well as certain other state awards through Appendix D programs. For these reasons, we recommend that states be allowed to begin community charging programs once funds are obligated – rather than waiting until sites are built – to ensure communities outside of the corridors see intended impacts of BIL programs without waiting years.

BIL's EV charging investments are designed to support a growing private EV charging market, but effective implementation is necessary to ensure success.

The federal government is uniquely positioned to accelerate transportation electrification by leveraging significant private capital via public/private partnerships. Federal support can reduce private sector risk of investing into early-stage markets and bring private capital off the sidelines. With respect to EV charging, federal policies should act as a market stimulant to incent credible charging companies to extend their infrastructure footprints ahead of when they otherwise might if based on EV sales alone. To ensure a competitive market for EV charging flourishes over the next decade, EVgo wishes to provide recommendations to the offices in the Administration leading NEVI's administration based on successful best practices.

We greatly appreciate that BIL was crafted with exactly those types of partnerships in mind. Congress wisely designed alternative fueling and electrification investments in BIL to be a multiplier for, not to supplant, private sector investment in these technologies. Under NEVI, we expect that most states will use their formula funds to partner with experienced operators like EVgo to expand our public networks. We support this approach because it leverages the strengths and expertise of both the public and private sector. EVgo and other charging networks have the experience to install, operate and maintain equipment over the long term. As an owner-operator, EVgo relies on customer utilization for our revenue. This aligns our interests with drivers and compels us to invest in operations, maintenance, innovation and other features that improve the customer experience. Public funders, such as state DOTs, can optimize NEVI program design to advance additional policy priorities such as serving environmental justice or rural communities, or stimulating local economic development. Today, there remain some open items that require resolution so that investments intended by Congress are not delayed.

The charging programs in BIL are new ground for state DOTs, but FHWA and the Joint Office of Energy and Transportation can use lessons learned from Appendix D programs to assist state DOTs.

NEVI, like many federal-aid highway programs this committee has jurisdiction over, is fundamentally led by state DOTs with guidance and rules from the U.S. DOT. But for most state DOTs NEVI will be the first time they are the lead agency for a charging deployment program. The good news is that many states have already administered charging programs funded by Appendix D of the Volkswagen "Dieselgate" settlement. Under Appendix D, where programs were administered largely by the state energy and environmental offices beginning as early as 2017, many states saw initial stumbling blocks in implementation, and efficiencies naturally grew over time. With NEVI we expect to see similar challenges for the state DOTs that their energy office counterparts experienced in the early administration of these programs. A best practice, as modeled by the state of Colorado, is to bring together relevant state Energy, Transportation, and Air Quality offices to ensure alignment and learn from past experiences. State DOTs have expeditiously drafted and submitted implementation for NEVI formula funds and should be commended for their commitment to soliciting and incorporating public and stakeholder comments in designing those programs. We hope that each state will continue to be receptive to data and lessons learned as the NEVI programs evolve.

At a high level, EVgo has recommended[13] states leverage transparent, points based scoring rubrics in order to evaluate projects for funding under NEVI, as has been best practice in Appendix D and other funding programs. When funding programs overspecify program requirements, qualified applicants may not respond to solicitations, often leading to delays in actual implementation of the program objectives. For example, one challenge we are seeing in state implementation in the NEVI programs is a requirement to bundle sites in order to apply for funding. Contrary to many of the effective programs administered under Appendix D, many states under NEVI are asking applicants to group – or bundle - several locations into one application, which has practical challenges that are likely to lead to delays in implementation. EVgo has seen bundling as one of the most prominent flaws in program design and has engaged in public processes in states such as California, Oregon, Tennessee, Massachusetts, Michigan, North Dakota and others to push for a site-by-site application process as seen in nearly all of the Appendix D programs. This program design will likely lead to implementation challenges for applicants, which will lead to delays in charging stations being built, especially if this bundling concept forces states to reissue their solicitations should insufficient qualified applications be submitted in response. In addition to the risks the bundling design poses to the success of various state NEVI programs, bundling often prevents small business applicants from participating, as they may be unable to fill an entire bundle, and thereby limits choices for consumers.

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[13] https://site-assets.evgo.com/f/78437/x/8479bfa48d/021622_nevi-best-practices-for-charging-infrastructure.pdf

Unlike typical state DOT projects like bridges that inherently are one project to be awarded to one winning applicant, a recent Ohio EPA charging award from their Appendix D solicitation made 32 separate awards for a $7.9 million solicitation[14]. This is more common in the EV charging space than other solicitations that state DOTs are accustomed to administrating and is necessary for the success of the NEVI program. As such, EVgo encourages FHWA to work with states to leverage best practices from the VW Appendix D solicitation by requiring site by site applications rather than requiring applicants to bundle multiple sites into one application.

In addition to bundling, other flaws we are commonly seeing include long timelines for state reviews that will delay charger installations until 2024 at the soonest, potential requirements for ancillary technologies that will add costs to projects, or utility ownership in markets with significant private sector interest. In the case of untested program designs that may face unintentional challenges in implementation, we recommend that states grant addition points in a scoring rubric rather than requiring criteria that may impede the success of their programs.

To be clear, implementation challenges are inevitable in the early years for new programs as with the Appendix D programs, and we are hopeful that the program design of the NEVI programs will only improve with time if state DOTs leverage best practices from their peers. To that end, FHWA should play an important role disseminating best practices and examples for states so that NEVI does not experience the same problems as early Appendix D programs. We applaud the American Association of State Highway and Transportation Officials (AASHTO) and the National Association of State Energy Officials (NASEO) for their work on this front thus far. DOT could go one step further by encouraging stronger interagency partnerships where experienced State Energy Offices are at the table to share those lessons learned.

One immediate item that must be completed is the final rules for the NEVI minimum standards, as many states are waiting to make key program design decisions until that rulemaking is complete. Beyond formal rulemakings, the Joint Office provides valuable technical assistance to states for NEVI. This technical assistance should leverage these learnings and offer tried and validated program designs for states to replicate in their own programs.

Recommendation: FHWA should remove elements of its proposed minimum standards that will inhibit a competitive private market and innovation.

The committee should be commended for its work on BIL, which will spur innovation and investments necessary to enable a competitive private market for EV charging to flourish over the coming decade. This competitive market – and ensuing investments - will be seen across 50 states, fueling job creation in jobs such as EV technicians, electricians, construction and more.

The importance of this competitive market cannot be understated, and it is necessary. We do not expect the federal government, states, or even utilities to be able to or interested in owning retail fueling businesses long-term.

That said, despite the importance of BIL to the competitive market for EV charging, there are a number of pending – but not yet approved – requirements that potentially imperil its success if they remain

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[14] https://epa.ohio.gov/about/media-center/news/ohio-epa-awards-grants-for-electric-vehicle-charging-stations-in-25-counties#:~:text=Ohio%20EPA%20has%20awarded%20%247.9,for%20travelers%20across%20the%20state.

unchanged. Before these rules become final, FHWA should address the problematic elements of its proposed rulemaking on NEVI minimum standards that will encumber this effort. As noted in our public comments[15], EVgo recommends specifically:

- FHWA should eliminate a proposal for states to regulate rates of return on investment. Unlike utilities, electric vehicle service providers, property owners that choose to host EV charging on their premises, and other possible applicants to the NEVI programs are not like regulated utilities with guaranteed rates of return. Private investment in EV charging is recouped over several years via metrics such as station utilization, or a measure of how much the stations are used over time by EV drivers—and potentially may never deliver a return even with generous funding support; grantees will take on that risk. FHWA and state DOTs are not equipped to regulate the prices charged to drivers, nor are they equipped to fully understand a private entity's full costs to deploy and operate a charger, including equipment or hardware, development and operations costs[16]. A cap on the rate of return is a wholly inappropriate requirement that would chill investment, contrary to the goals set forth under BIL. EV charging operates in a competitive retail environment and does not have monopoly pricing power or guaranteed returns like regulated utilities. This is unlike other projects that face similar restrictions, like ferry boats or toll roads, that typically have features of a monopoly. This requirement must be removed.
- FHWA should also amend proposals that specify specific versions of interoperability standards and protocols to set reasonable floors. FHWA's proposed rulemaking requires adoption of specific versions of standards, including ISO 15118, which is not yet widely utilized nor necessarily offers significant benefits to drivers over other standards, as well as Open Charge Point Protocol version 2.0.1. In a rapidly moving technology environment like EV charging, this level of specificity is a poor fit and will limit innovation. Instead FHWA should set reasonable floors or outcomes that companies can build on in the coming years.

Charger deployment can meet FHWA's timelines if national recognition and technical assistance programs are stood up to assist states.

The NEVI guidance includes an ambitious, but achievable goal of energizing charging stations within six months of obligating funding. In order to meet these goals, states will need to work with stakeholders in the EV charging ecosystem to address the current bottlenecks impeding rapid third-party charger deployment. The actual construction of a charging station typically takes just 4-8 weeks, but the entire process to bring a fast charger online—from site host outreach through utility engagement and local permitting to interconnection and final inspection— currently takes closer to 18 months in total.

On local permitting, the major obstacle is not any federal laws currently on the books, given that the vast majority of our sites are built on already developed parking lots in convenient locations for drivers such as gas stations and retail centers and will therefore receive a categorical exclusion from the National Environmental Policy Act. Rather, we more commonly experience delays at the local level, such as with city and county permit offices, where insufficient resourcing constrains those permitting offices

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[15] https://www.regulations.gov/comment/FHWA-2022-0008-0357
[16] See page 7: https://site-assets.evgo.com/f/78437/x/f28386ed92/2020-05-18_evgo-whitepaper_dcfc-cost-and-policy.pdf

from developing streamlined processes for approving permits. By adopting best practices from jurisdictions processing permitting applications in a timely manner, we believe many of these delays can be shortened significantly. However, if a NEVI grantee cannot complete energization within 6 months of obligation of funding due to local permitting or utility delays, that should not be held against the grantee.

Recommendation: Support national recognition programs that share best practices and provide technical assistance to states.

We recommend the Joint Office support nationwide efforts to establish best practice and technical assistance programs related to local government permitting. This is a big challenge that requires big solutions, and the federal government has a proven model in addressing soft costs as has been done in the solar industry through SunShot.

One successful program to address permitting issues in the solar space is the federally funded SolSmart,[17] a national recognition program for local governments. SolSmart recognizes cities, counties, and regional organizations for making it faster, easier, and more affordable to go solar, and includes technical assistance for local communities to become "open for solar business." Similar programs for EV charging are already being piloted or launch soon in Ohio, Michigan,[18] Minnesota[19] and Chicago[20]. These EV Smart or EV Ready programs are preparing communities for the influx of federal dollars and to reach their own transportation electrification goals. Organizations like the Great Plains Institute, the Interstate Renewable Energy Council and the Rocky Mountain Institute are developing a nationwide version of this program to help more communities successfully implement BIL and meet their own transportation electrification goals.

From the private sector side, EVgo established the Connect the Watts™ initiative which brings together representatives including automakers, suppliers, utilities, and local governments to identify best practices for deploying infrastructure, including complementary permitting[21] and utility processes for EV chargers[22], which I will discuss momentarily.

Recommendation: Address utility energization timelines, which are increasingly becoming a bottleneck for charger deployment.

Without reforms – and significant inward looking by utilities to improve their own processes, as well as increased staffing of engineers and others in utilities' service planning departments – the six-month deployment target under NEVI will be difficult to achieve.

Even before any NEVI funding has hit the streets, EVgo has already seen delays in energization from utilities across the country, particularly as charging station requests for new service become more ubiquitous, and staffing in serving planning, engineering, and related departments has not grown apace with this growth. The opportunity from BIL to expand EV charging to new regions and geographies will

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[17] https://www.energy.gov/eere/solar/solsmart-funding-program
[18] https://betterenergy.org/blog/qa-with-lola-schoenrich-ev-ready-communities-pilot-project-in-michigan-and-ohio/
[19] https://betterenergy.org/blog/ev-smart-cities-and-native-nations-program-launches/
[20] https://mayorscaucus.org/initiatives/environment/becoming-ev-ready/
[21] See https://site-assets.evgo.com/f/78437/x/597fa39fa0/connect-the-watts_local-permitting-best-practices.pdf
[22] See https://site-assets.evgo.com/f/78437/x/a36897f7b3/connect-the-watts_utility -best-practices.pdf

further increase these demands. While we are pleased to see the Administration begin laying the groundwork for conversations around vehicle-to-grid integration, the issue of utility energization timelines is a separate, foundational issue that must be addressed.

The good news is that the BIL included amendments to the Public Utilities Regulatory Policies Act to require states to consider measures to promote greater transportation electrification. In addition to reforming electricity tariffs to drive greater third-party investment in charging, addressing this issue by amplifying best practices from peers, increasing utility staffing, focusing on supply chain planning for transformers, greater capacity planning with an eye toward greater electrification, reforming the utility easement process, and more will all make a difference. Leadership from DOE, the Joint Office, and other agencies will be necessary to create this culture shift necessary for this massive market transformation. EVgo is hopeful that DOE's GridAssist program will be one such avenue for these critical conversations.

Build America, Buy America is creating a domestic EVSE supply chain, but it is not in time for round one of NEVI.

Until very recently, virtually all of the fast charging installed the United States were manufactured abroad. The lack of domestic manufacturing capacity is even more acute for high-powered fast chargers, for which proven American made supply still does not exist at any meaningful scale. The investments in BIL and the accompanying Build America, Buy America policy, are spurring the initial development of an American EVSE manufacturing base. Although EVgo is not a manufacturer of EVSE, as a technology-specifier of charging, we use a group of hardware suppliers for our network which gives us significant visibility into the speed of this transition to domestically manufactured products. In fact, EVgo has long consulted with our hardware suppliers on their offshoring plans, and those discussions intensified as BIL moved through the legislative process.

Based on EVgo's analysis of the market and projections for 2023 NEVI deployments, this coming domestic supply will not meet the demand for federally funded projects. FHWA has the ability to continue to provide a temporary waiver for EV chargers as it has in the past, but the existing waiver as proposed functionally expires at the end of this year. Due to ongoing supply chain concerns and the highly specialized manufacturing needed to assemble fast chargers, the proposed waiver is insufficient for new domestic facilities to become operational, but also produce volumes of fast chargers at significant scale. In comments[23] provided to FHWA on the waiver, EVgo suggested extending a full waiver through 2023 for fast chargers, and reevaluating supply at that time through a data-driven approach.

Without a more appropriate waiver period, the consequences for NEVI will be significant as we expect the private sector demand from that program for fast chargers in 2023 to be substantial. Over the first two years of the NEVI program, states are expected to receive $1.5 billion. At an estimated $150,000 cost per charger (a figure used by a number of states for planning), states could support between 8,000 and 10,000 chargers (depending on administrative and other cost overruns) in the first two years of the program. The supply crunch will be especially acute for 350 kW chargers, which are an excellent fit for NEVI's initial corridor focus, helping EV drivers achieve the fastest charge possible on the go. States are also expressing an interest in using NEVI funds for higher powered 350 kW-capable chargers, including Illinois[5], Oregon[6] and Ohio[7]. 350 kW chargers are the furthest behind in onshoring and highlight a

[23] https://www.regulations.gov/comment/FHWA-2022-0023-0075

disconnect between states' NEVI priorities and this FHWA policy. In fact, the American Association of State Highway and Transportation Officials filed comments[24] on the proposed waiver specifically requesting it be extended.

A full waiver through 2023 will also give purchasers of chargers like EVgo much-needed time to evaluate newly onshored chargers for safety and reliability. EVgo takes pride in delivering a product to consumers which goes well above and beyond Underwriters Laboratories (UL) certification on safety and reliability criteria. In our experience, UL certification is a necessary but not sufficient step before chargers are deployed in the field as we undertake further steps at our EVgo Innovation Lab in El Segundo, California to ensure the safety and reliability of fast charging equipment.

The more appropriate waiver period is also important because it will also allow more time to onshore additional component pieces that regularly fail from wear and tear and vandalism. If suppliers are relying on a single domestic component supplier as demand ratchets, as is very possible should the proposed waiver be finalized, then there is a significant supply chain vulnerability that may impact safety and reliability. A waiver that allows for time for redundancy to develop is necessary to ensure that charging operators can not only meet the construction requirements of Buy America Build America but also so that maintenance can be done expeditiously to deliver drivers the customer experience they expect and deserve.

Ultimately, EVgo believes our recommendation of a full waiver for 2023 strikes the appropriate balance of incentivizing investment in U.S. manufacturing and not impeding NEVI by lifting longstanding Buy America waivers before the market is sufficiently mature.

Other Opportunities outside of BIL:

Finalizing RFS regulations for the E-RIN pathway will support additional charger deployments.

As noted above, support for charging infrastructure deployments in the early days of the industry often requires both capital expenditure and operating expenditure support. One such avenue for the latter is through credit programs. For example, the Environmental Protection Agency (EPA) is currently working to finalize regulations under the RFS for a renewable electricity pathway, commonly referred to as an E-RINs. The biogas-to-electricity pathway presents an enormous opportunity to accelerate private investment in EV charging, increase EV adoption, and reduce greenhouse gas emissions, particularly methane – outcomes consistent with the Biden Administration's climate goals. We support the Administration's efforts to complete this longstanding priority, and we look forward to reviewing their upcoming proposal.

E-RINs offer a unique opportunity to attract private investment in EV charging infrastructure by improving the long-term economic sustainability of charging stations, a critical step in scaling up transportation electrification. Therefore, the EPA should ensure that charging station owners or operators are directly included in the E-RIN value chain by properly measuring and allocating the value of E-RINs generated during public charging sessions. This will incentivize private investment in incremental charging infrastructure, and empirical charging session-level data will prevent any double counting of credits. Further, this is a best practice employed in all state-level clean fuels programs.

[24] https://www.regulations.gov/comment/FHWA-2022-0023-0015

Swiftly implement guidance on the 30D and 30C tax credit modifications from the Inflation Reduction Act.

The tax provisions in the Inflation Reduction Act, specifically the expansions of the 30D Clean Vehicle Credit and the 30C Alternative Fuel Infrastructure Credit, are well-designed complementary policies to promote transportation electrification. They work in tandem to stimulate both EV sales and infrastructure buildout, bolstering creation of sustainable U.S. jobs in manufacturing, construction, sales, and operations across the EV value chain. We encourage the Treasury Department to expeditiously issue guidance for both credits to enable their usage in 2023. The Clean Vehicle Credit will require substantial guidance on the new domestic content requirements. It is vital that this guidance is clear and achievable so that consumers can use the credit to the fullest extent possible. The infrastructure credit requires an update to IRS guidance from 2007 to bring it in line with the latest industry technology trends, like powersharing, which is a commonly used configuration for EV charging that allows multiple vehicles to charge at a single charge simultaneously while also helping that charge to throttle its grid impact.

Conclusion

Thank you for the opportunity to share EVgo's perspective with the committee today. As noted at the onset of my testimony, EVgo is grateful to the committee for your leadership in passing BIL and including strong charging infrastructure provisions to promote the acceleration of an ongoing transition to electric vehicles. Congress and the Administration have acted boldly with BIL and IRA, and we commend them for that action. While there is currently still uncertainty regarding some specific elements of program implementation, we remain strongly supportive of the recently enacted EV and EV infrastructure programs and hope that our suggestions on best practices are implemented to ensure that the funds are expended as Congress intended. I look forward to answering any questions you may have.

Senator CARPER. Great. We look forward to asking those questions. Thank you very much, Mr. Levy.

Now we are going to hear from Dave Bauer, the President and CEO of American Road and Transportation Builders Association.

Mr. Bauer, please proceed with your statement, and welcome.

STATEMENT OF DAVE BAUER, PRESIDENT AND CEO, AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION

Mr. BAUER. Thank you.

Good morning, Mr. Chairman, Ranking Member Capito, and members of the Committee. Thank you for providing the American Road and Transportation Builders Association an opportunity to take part in this timely discussion.

In 2015, then Memphis, Tennessee, Mayor A.C. Wharton called the interchange at Interstate 55 and Crump Avenue Malfunction Junction. And a State transportation official referred to the area as the worst interstate that we have in the State of Tennessee.

Fast forward to 2022, a $141 million project broke ground this summer to enhance safety and mobility for individuals in the affected region. The I–55 Crump interchange is one of the 29,000 infrastructure improvements moving forward in every congressional district this year with highway and bridge formula funds provided by the Infrastructure Investment and Jobs Act, or Bipartisan Infrastructure Law.

The U.S. Department of Transportation has released another 192 discretionary grants with more 2022 awards on the way. Though each project has a unique story of need and solution, they are all tangible illustrations of the impacts underway from the leadership of this Committee in delivering generational investments through a multi-year Surface Transportation Program reauthorization. On behalf of all ARTBA members, thank you.

To put the 29,000 State led projects in perspective, highway formula funds supported 2,500 more safety, mobility, and infrastructure improvements in 2022 than in the previous year. To be clear, what we are seeing is more than just an increase in the quantity, but also an enhanced ability for States to tackle large scale projects with the resources and confidence provided by your legislation.

As an example, the number of $100 million-plus projects increased from 18 in 11 States last year to 24 in 14 States this year. This data makes a pivotal point that IIJA's highway and bridge investments are working as intended. We have provided each of you with a fact sheet to help you see the specific ways your constituents are benefiting from the first year of the law's highway and bridge investments.

Mr. Chairman, as powerful as the IIJA has been, there is no denying the elephant in the room. Inflation has reduced the purchasing power of every American household, and it is having the same effect on Federal, State, and local efforts to deliver or to advance transportation infrastructure improvements.

The impacts of inflation, however, vary by State and project type. Some regions have experienced material prices as high as 40 percent, yet bids in other areas are coming in below expected cost. While inflation is clearly diluting the initial investments from the

Bipartisan Infrastructure Law, it is also clear that the situation would have been dramatically worse if Congress had opted for another short term, flat funded extension of the Surface Transportation Programs.

Another part of the IIJA story relates to regulatory requirements that influence how much projects cost and how long they will take to complete. The Infrastructure Law includes common sense reforms to the environmental review and approval process that once implemented have the potential to reduce project costs and speed their benefits.

Conversely, well intended new requirements, such as the expansion of Buy America to construction materials, if not pursued with stakeholder input and a clear eye on market realities, could have the opposite outcome.

While I am pleased to report on the progress of the IIJA's highway and bridge investments, I must also emphasize that this is year one of a 5 year commitment. The history of previous long term reauthorizations indicate these results will escalate substantially in the subsequent years.

Mr. Chairman, before I wrap up, I want to take a moment to thank Senator Inhofe for his leadership role on this Committee, for the three reauthorizations of the Highway and Bridge Program that led up to the Bipartisan Infrastructure Law, and wish you well on your next adventure.

Mr. Chairman, thank you again for allowing me to participate in today's hearing. I look forward to your questions.

[The prepared statement of Mr. Bauer follows:]

American Road & Transportation Builders Association

"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"

Testimony Presented to the Committee on Environment and Public Works
United States Senate

November 30, 2022

David Bauer, President & CEO
American Road & Transportation Builders Association

Chairman Carper, Ranking Member Capito, and members of the committee, thank you for convening today's hearing. I am David Bauer, president and CEO of the American Road and Transportation Builders Association (ARTBA).

Established in 1902, ARTBA is the only national association representing all aspects of the U.S. transportation infrastructure community. Our 8,000 members and 36 state affiliates own, manage, design, build and provide equipment and materials for all modes of transportation infrastructure improvements. The industry we represent generates $580 billion annually in U.S. economic activity and sustains more than four million jobs.

America's network of roads and bridges is the foundation of the U.S. economy, delivering the national connectivity envisioned by the U.S. Constitution. The Infrastructure Investment and Jobs Act (IIJA), signed into law Nov. 15, 2021, enhances this vision, and was made possible by the remarkable leadership of this committee. For two consecutive Congress', the Environment and Public Works Committee demonstrated that bipartisanship is still possible. The *Surface Transportation Reauthorization Act of 2021*, which was a precursor to the IIJA, embraced the nation's mobility needs and crafted public policy to address them.

ARTBA has long advocated for federal leadership in the development and maintenance of a national transportation network to support continued U.S. economic growth and meet the public's demand for safe and efficient travel.

IIJA in Historical Context

The IIJA should not be undersold as a half-measure, but rather as a down payment for the nation's future. The five years of funding enabled by the infrastructure law will supercharge the long-term modernization of roads, bridges, airports, drinking water, and energy systems. Nearly half of the IIJA's generational investment—nearly $450 billion—will be spent improving highways, bridges, and public transportation systems.

While some have argued the law does not provide meaningful increases in spending, the data proves otherwise. The increase in nominal highway funding is the largest in more than 50 years.

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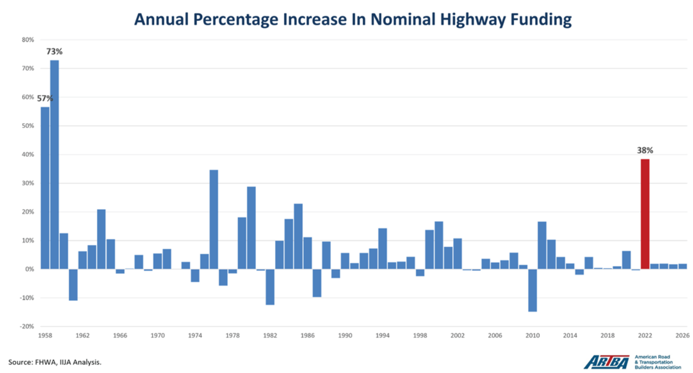

IIJA Highway and Bridge Investment Status

Today's hearing is an important step toward providing transparency about how IIJA highway and bridge funds are being utilized. The good news is that state transportation agencies have initiated more than 29,000 improvement projects this year—2,500 more than in 2021. The chart on the following page highlights how states have obligated their FY 2022 highway and bridge funding and how many new projects these resources are supporting.

Thirty-seven states saw an increase in the number of federal-aid projects supported in FY 2022, and more large projects were advanced in FY 2022 compared to FY 2021. The number of large projects receiving federal support of $50 million or more increased by over 50 percent. This growth in large projects that received federal funds helps account for those states, like Texas, where the number of projects decreased following enactment of the bipartisan infrastructure law. In total, 105 projects across 29 states saw $50 million+ in federal investment compared to just 69 projects in 25 states in FY 2021.

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Federal-Aid Highway & Bridge Formula Fund Commitments and Spending (as of September 30, in millions $)				
	Value of Federal Highway & Bridge Program Formula Funds Committed		Number of New Project Commitments	
State	FY 2021	FY 2022	FY 2021	FY 2022
Alabama	$810.9	$958.7	618	581
Alaska	$554.8	$688.4	264	248
Arizona	$805.7	$960.3	269	290
Arkansas	$557.4	$775.3	246	349
California	$3,511.1	$4,702.1	970	925
Colorado	$584.0	$754.2	561	600
Connecticut	$534.6	$714.4	320	381
Delaware	$185.4	$250.0	111	120
D.C.	$164.7	$213.5	106	92
Florida	$1,960.3	$2,487.7	1,219	1,441
Georgia	$1,370.5	$1,862.3	770	897
Hawaii	$198.5	$290.0	81	95
Idaho	$323.2	$472.1	319	405
Illinois	$1,507.6	$2,001.2	941	1,220
Indiana	$1,025.6	$1,332.7	1,490	1,634
Iowa	$525.5	$677.4	224	266
Kansas	$388.5	$458.7	205	198
Kentucky	$733.6	$897.2	506	509
Louisiana	$734.3	$959.6	524	551
Maine	$196.7	$272.1	331	396
Maryland	$589.2	$627.5	455	454
Massachusetts	$630.6	$888.1	168	176
Michigan	$1,136.8	$1,460.3	1,069	1,252
Minnesota	$660.7	$919.6	302	393
Mississippi	$522.0	$640.2	319	371
Missouri	$1,002.0	$1,175.5	993	872
Montana	$454.6	$649.3	472	469
Nebraska	$302.1	$369.4	150	156
Nevada	$366.2	$509.6	79	113
New Hampshire	$173.9	$209.8	188	206
New Jersey	$970.7	$1,150.4	305	468
New Mexico	$386.9	$511.7	317	341

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New York	$1,611.9	$2,165.8	1,240	1,099
North Carolina	$1,104.8	$1,686.5	863	862
North Dakota	$271.1	$388.6	299	358
Ohio	$1,414.0	$1,846.7	1,472	1,665
Oklahoma	$715.4	$998.7	523	593
Oregon	$477.7	$685.8	319	360
Pennsylvania	$1,733.4	$2,350.6	727	1,078
Rhode Island	$222.8	$298.0	122	160
South Carolina	$724.1	$990.3	330	372
South Dakota	$320.1	$415.0	268	216
Tennessee	$840.3	$1,116.8	863	837
Texas	$4,284.8	$5,151.0	1,399	1,217
Utah	$373.6	$470.1	275	292
Vermont	$218.9	$283.7	346	419
Virginia	$982.0	$1,326.1	698	908
Washington	$693.4	$879.8	483	583
West Virginia	$472.8	$626.4	425	442
Wisconsin	$765.3	$957.6	613	719
Wyoming	$276.7	$355.4	386	378
Total	**$41,372.0**	**$53,831.9**	**26,543**	**29,027**

Source: ARTBA analysis of U.S. Treasury data on Federal Highway Administration (FHWA) grants where the awarded base year is FY 21 or FY 22, including new formula bridge program under the IIJA. Does not include highway program funds flexed by the state to eligible transit, research, or other projects. Some projects may include carry-over formula funds from previous federal-aid highway programs. Data through Sep 2022 and subject to updates from U.S. Treasury.

It is hard to overstate the role of the federal highway program to the development and continued management of the U.S. surface transportation network. As the map on the next page illustrates, federal funds, on average, support more than 50 percent of state highway and bridge capital outlays—with some states relying on the federal program for more than 80 percent.

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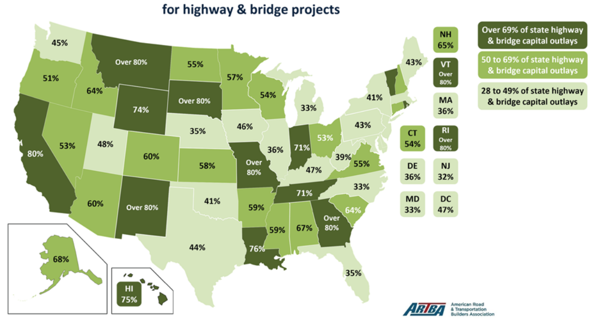
Federal funds, on average, provided 51% of annual State DOT capital outlays for highway & bridge projects



Source: ARTBA analysis of FHWA Highway Statistics data, total average 2016-2020 from tables SF-1 and SF-2. The percent is the ratio of federal aid reimbursements to the state and total state capital outlays and is indicative of the importance of the federal aid program to state capital spending for highways and bridges. Does not include local capital spending. Federal highway reimbursements are primarily used for capital outlays, including construction, right of way and engineering, but are also used for debt service for GARVEE bonds that may represent capital work performed in a different year.

The foundation of the federal-state partnership that is responsible for the nation's network of highways and bridges are the formula programs, which provide state-focused, flexible, and recurring revenue. These different categories of federal support allow national needs to be pursued in a manner that respects the unique challenges and demands of each individual state.

Nearly **nine out of every 10 dollars** spent on highways and bridges under the IIJA will be directed via formula—$303 billion over five years.

Although Congress and the Biden administration did not finalize the 2022 appropriations process until about six months after the fiscal year's Oct. 1 start, the states nevertheless worked quickly to commit the IIJA's $53.5 billion in FY 2022 highway and bridge formula funds by the Sept. 30 deadline.

The 20 largest IIJA projects supported by formula funds in FY 2022 are:

1. Texas – Expanding Loop 1604 on I-10 in San Antonio – $291 million
2. Texas – 635 East Project in Dallas – $225 million
3. New York –Van Wyck Expressway Capacity & Access Improvements to and from JFK International Airport – $211 million
4. Arizona – Roadway Widening on I-17 Split – $200 million
5. Texas – I-35 Widening in Travis County – $192 million
6. South Carolina – Phase 1 Carolina Crossroads I-20/26/126 Corridor Improvement Project – $145 million
7. Ohio – I-70/71 Downtown Ramp Up Project in Columbus – $123 million

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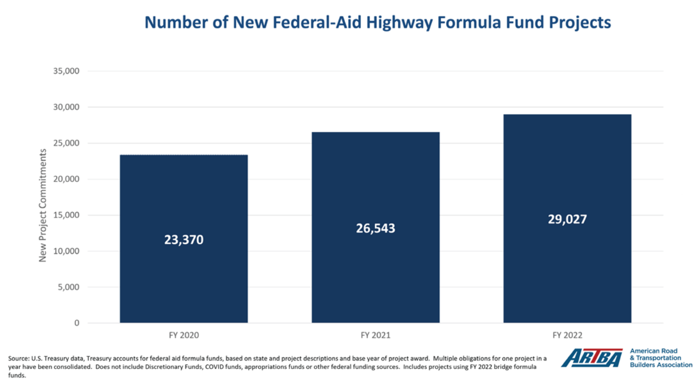
8. California – Rehabilitation of Pomona Freeway between the Long Beach and San Gabriel River Freeways – $121 million
9. California – Route 46 Corridor Improvement Project in San Luis Obispo – $119 million
10. Illinois – Interchange Reconstruction and Bridge Replacement on I-57 at I-74 Interchange in Urbana-Champaign – $107 million
11. Georgia – State Road 2/State Road 515 Roadway Reconstruction Project in Northern Georgia – $104 million
12. California – State Route 55 Improvements Project in Orange County – $101 million
13. California – Rehabilitation of Route 10 Near Coachella – $100 million
14. Tennessee – Interchange Modification on I-55 at Crump Boulevard in Memphis – $99.6 million
15. Texas – Widen Loop 375 in El Paso – $95 million
16. New Jersey – Route 18 Drainage and Pavement Rehabilitation in East Brunswick – $91.7 million
17. Tennessee – Improvements at I-75, I-24 Interchange near the Tennessee-Georgia Border – $91.2 million
18. South Carolina – Phase 2 Carolina Crossroads I-20/26/126 Corridor Improvement Project – $90 million
19. California – SAC 5 Corridor Enhancement Project in Sacramento – $88 million
20. Texas – Irving Interchange Project in Dallas – $80 million



State-Specific Impacts

The impacts of the 29,000 projects just launched will be widely felt—there is **at least one new project in every congressional district**.

The type of work ranges from major interstate capacity improvements to bundled bridge repairs in local communities. Here are examples of how these projects will positively impact both urban and rural communities.

- Delaware: Construction of a bypass between U.S. Highway 113 and SR 24 in Millsboro, will help improve safety and alleviate what is known as one of the worst bottlenecks in the state.[1] The new road will give trucks, including tractor-trailers, an alternate route instead of going through the downtown area.

- West Virginia: Work is underway on a dozen bridges that need rehabilitation or replacement on I-79. Smaller projects across the state are also providing key safety improvements. A project supported by IIJA investment was awarded this summer to upgrade guardrails on Corridor H in Hardy County.

- New York: Access to JFK International Airport will be the focus of a new $211 million project to improve capacity and access improvements on the Van Wyck Expressway.

ARTBA has provided committee members with two separate state-specific summaries throughout 2022, detailing how formula funds are being utilized. We will continue the practice of regular updates and also have available an online tool (artbahighwaydashboard.org) where IIJA information on state spending in support of highway and bridge projects can be accessed at your convenience.

Where the Formula Funds Are Directed

The type of improvements formula funds support will vary depending on projects selected by each state recipient. Critics of federal highway spending often misrepresent the programs' work, suggesting these decisions are made in Washington, D.C., as opposed to in the communities that know first-hand how best to enhance mobility and safety.

Annual data from the Federal Highway Administration (FHWA) illustrates the outcome of these decisions. The figure on the next page reinforces a long-standing trend of maintenance activities receiving the bulk of federal funds, with 46 percent of the value of projects supported by IIJA funds in FY 2022 going towards reconstruction and repair work.

States also used federal funds to support adding a lane or capacity to an existing right of way, accounting for 21 percent of project costs. New construction of a road or bridge that did not exist before accounted for six percent of total project costs.

Other spending (accounting for 12 percent of project costs) included projects related to bridge inspections, intelligent transportation systems, research, planning, and other eligible activities.

[1] https://www.delawarepublic.org/delaware-headlines/2022-01-01/work-to-build-a-bypass-around-the-town-of-millsboro-is-set-to-begin-in-2023

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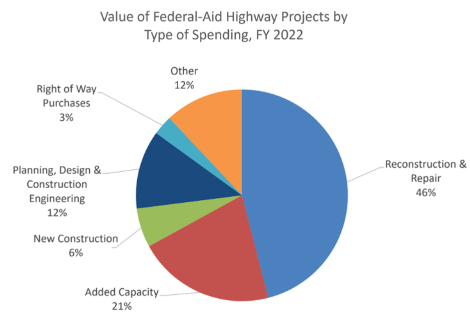
How States Used IIJA Federal Funds in FY 2022



Source: Data from Federal Highway Administration for FY 2022.

Discretionary Grants

The IIJA commits $45 billion over five years to highway and bridge allocated and discretionary grant programs designed to address numerous federal priorities, including: freight networks, infrastructure resiliency improvements, research, rural and mega projects and federal and tribal lands. About 13 percent of the IIJA's highway and bridge funds will be distributed via these programs by the U.S. Department of Transportation (U.S. DOT).

Thus far, the Biden administration is awarding discretionary grant projects evenly between urban and rural areas.

For example, in FY 2022, U.S. DOT awarded, via the National Significant Freight and Highway Projects program, known as INFRA grants, 15 projects to rural communities and 11 to urban areas, though urban projects received a larger share of funding.

Similarly, the Local and Regional Project Assistance Program, known as RAISE grants, funding has been equally divided for the 166 projects between urban and rural areas. Roughly half of the awards went to road-related project improvements.

Though FY 2022 has concluded, about $3.4 billion in discretionary awards that could support highway and bridge improvements are outstanding, including the IIJA's new Bridge Investment Program, National Infrastructure Project Assistance Program (MEGA), and Rural Surface Transportation Grant Program (RURAL).

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IIJA Bridge Repairs: Work Underway, More to Come

The nation's long-neglected bridges are also receiving significant attention because of the IIJA. ARTBA's most recent analysis of the U.S. DOT's National Bridge Inventory database found 43,578 structures are considered structurally deficient. With IIJA's increased bridge discretionary grant program investment levels, combined with a new, dedicated bridge formula program, states are taking meaningful steps to address this challenge.

For example, Illinois committed $107 million for a project that includes an interstate bridge replacement in the central part of the state. States with a high number of rural bridges are using the law's flexibility to bundle bridge projects, like in Alabama, to access funds and accelerate repairs.

The IIJA also created a new dedicated bridge formula program, but because those funds have four years to be committed to projects, most states did not obligate funds in the first year, opting to leverage other formula programs for bridge work. However, several states have already begun to take advantage of this opportunity. For example, Pennsylvania used bridge formula funds to support 129 projects in year one. The Biden administration announced a series of small bridge planning grants in October, but the vast majority of the $2.4 billion in Bridge Investment Program grants have not been awarded.

Inflation's Impact on the Bipartisan Infrastructure Law

There are few public sector actions that can deliver the same level of short- and long-term economic benefits as transportation infrastructure investment. Increased construction activity provides immediate job creation and retention, while putting in place capital assets that support supply chain improvements and enable access to jobs, services, materials, and markets for decades. These dual-track benefits are particularly critical during times of economic uncertainty and disruptions, like those we have faced since the onset of the COVID-19 pandemic.

These adverse economic conditions must factor into any analysis of the IIJA's first year. Increased materials costs—and decreased availability or extended delivery times in many cases—have undoubtedly had a dilutive impact on the new law's historic investment levels.

Since the pandemic, high inflation rates have challenged nearly all sectors of the economy, and ARTBA's tracking of the costs for highway and street construction inputs, like energy, goods and services, show increases of almost 30 percent since January of 2021 and 11 percent since the IIJA's enactment. Estimates of *total* project cost inflation, which also accounts for labor, overhead and other less volatile inputs, are not as extreme but still significantly elevated over historical growth rates.

This national data underscores the challenging environment in which the new infrastructure law's first year of investments are being deployed. This information, however, must also be considered alongside the wide variances that are occurring among states, regions, and project types.

While we have received reports of input cost increases in excess of 40 percent for some commodities, as well as difficulties in procuring key materials, we also have seen a significant number of states in which project bids continue to come in below the initial engineer's estimates. Furthermore, 32 states have increased the value and number of contract awards for highway and bridge improvements over the last year.

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The dilutive impact of inflation on highway and bridge investment underpins ARTBA's calls for U.S. DOT to adopt a consistent and pragmatic policy regarding price escalation clauses. As part of this dialogue, we have urged the agency to modernize its practices and allow federal funds to be used for price escalation clauses on contracts pre-dating the bulk of COVID-induced economic disruption. The unprecedented and unforeseen increase in costs our industry has experienced in the last two years warrant enhanced flexibility in the use of these funds to preserve the continuity and efficacy of these projects.

Ultimately, though, as challenging as this situation has been for states and the transportation construction industry, ARTBA interprets the combination of available data as pointing to real— albeit heavily muted—market growth over the last year. Without the infrastructure law this committee helped craft, we would likely be looking at a market contraction.

Other IIJA Opportunities & Impediments

The funding increases in the infrastructure law are critical to delivering real-world safety and economic benefits. However, the bipartisan policy reforms in the IIJA also deserve attention since their implementation has the potential to speed up or slow down the law's outcomes. These reforms are some of the most substantial changes to federal surface transportation policy in more than a decade, but their uneven implementation warrants scrutiny.

One Federal Decision

The IIJA's project delivery process reforms, known as "One Federal Decision," were a shining example of the law's bipartisan spirit. However, in the year since its enactment, little progress in implementing them has been apparent. The current environmental review process takes an average of **five to seven years** to complete for a new federal-aid transportation project.[2] In some cases, ARTBA members have even experienced projects taking up to 14 years for review. These delays come at significant cost to taxpayers.

One Federal Decision seeks to alleviate some of these costs by moving projects from the study phase to construction more quickly without sacrificing important environmental safeguards.

In September, the FHWA published interim guidance concerning the IIJA's project delivery provisions but noted its contents do *"not have the force and effect of law and are not meant to bind the States or the public in any way."*[3] At the same time, the White House Council of Environmental Quality (CEQ) is currently rolling back recent National Environmental Policy Act (NEPA) reforms designed to reduce project delays. Reversing these improvements undermines the goal of saving time through streamlined project reviews and reinstates a NEPA process which often features excessive litigation over projects and procedural minutiae.

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[2] Executive Office of the President, Council on Environmental Quality, Environmental Impact Statement Timelines (2010-2018), available at https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf, p. 10.

[3] Available at https://www.environment.fhwa.dot.gov/legislation/authorizations/bil/bil_qa.aspx (Sept. 8, 2022).

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In 2023, the U.S. DOT is scheduled to submit a report to Congress on the efficiencies of the environmental review process and impediments to reaching the IIJA's project delivery goals.[4] The agency should prioritize the implementation of these overdue reforms to ensure they have an opportunity to be utilized before their impacts are the subject of such a report. The IIJA's success will be judged by delivering infrastructure improvements to communities in a timely and cost-effective manner. A workable review process is integral to meeting this objective.

We appreciate the committee's oversight to date of the bipartisan infrastructure law's implementation and urge you to remain engaged in the months ahead.

Buy America

The "Build America, Buy America Act," embedded in the IIJA, has emerged as a significant implementation challenge in its early months. ARTBA recognizes and supports the clear congressional intent to grow domestic manufacturing capacity in the long-term. Our concern relates to the potential for short-term disruptions of projects emanating from the IIJA's new requirements in this area.

For more than 40 years, Buy America has required that a domestic manufacturing process for iron, steel and certain manufactured products be permanently incorporated into federal-aid highway and transit projects. The IIJA expanded Buy America coverage to five categories of construction materials (non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall). After U.S. DOT deferred this new requirement for six months, it took effect November 10. At the same time, the department proposed narrow waivers from Buy America for items falling under modest de minimis thresholds and for the smallest of federal-aid projects. It proposed waiving the construction materials requirement for projects in advanced stages of procurement or for which contracts were already in place.

These waivers, while responsive to issues ARTBA has raised during this rulemaking stage, leave unanswered questions, all of which underscore our concerns about disrupting IIJA-funded projects. These include:

- Lack of a centralized, national effort to assess the domestically made availability of products falling under the five categories of construction materials listed above.
- Dearth of clear guidance on the new requirements, to ensure consistent implementation by all FHWA division offices, FTA regional offices and state and local transportation agencies.
- Continued potential for significant administrative costs and delays if contractors must document the origin of small, inexpensive commercially-available off-the-shelf (COTS) products that exceed the proposed de minimis thresholds.
- Ambiguities in the waiver process specific to particular projects and products.

[4] Sec. 11301, Codification of One Federal Decision.

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We urge this committee to engage with the Office of Management and Budget's Made in America Office, which is overseeing all domestic preference programs and evaluating all proposed waivers, and U.S. DOT to seek clarity in these areas. The new law's robust investment levels should enhance opportunities in domestic manufacturing, as is the intent of Congress. However, disrupting projects based on unclear (or unrealistic), short-term domestic preference objectives would undercut the economic benefits Congress intended, while doing little to advance the purpose of "Build America, Buy America" itself.

IIJA Year One Takeaways

The key takeaway from the first year of the IIJA is that the law is working as intended, with state transportation departments disbursing their funds and projects breaking ground in communities across America.

A virtue of the multi-year surface transportation reauthorization is the economic benefits that will follow project completion—be it increased state and local tax revenue, local job creation, or a boost to household income—are only set to compound from where we are today.

ARTBA members remain committed to working in partnership with state transportation agencies to realize the full vision of the IIJA.

Thank you again for the opportunity to testify. We look forward to sharing IIJA project success stories in the coming years.

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Senate Committee on Environment and Public Works
Hearing Entitled, *"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"*
November 30, 2022
Questions for the Record for Dave Bauer

Senator Inhofe:

1. Public-private partnerships (P3s) are a key tool for agencies to achieve cost-efficiency and manage risk while leveraging private sector capital, expertise, and innovation. The Infrastructure Investment and Jobs Act (IIJA) encourages consideration of P3s, for example by requiring value-for-money analyses for large Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing projects. One year into IIJA implementation, are many states and local governments seriously considering P3s to deliver projects with IIJA funding? If not, what roadblocks are preventing them?

    a. For what types of projects do you think there is the strongest potential for P3s?

For more than three decades, ARTBA has facilitated dialogues on utilizing P3s for transportation projects. We continue to see private capital as additive to core federal and state transportation investment and believe, under appropriate circumstances that states and localities should consider this option in close consultation with industry. In particular, while P3 principles can apply to many sizes and types of projects, we have often seen them used for large, complex, capacity-adding projects. P3s are often the only option for making those projects a reality, since otherwise they would disproportionately drain available funding from a state's transportation program.

Because deployment of P3s is ultimately a state or local decision, ARTBA seeks to educate industry and public officials about their use and the issues all parties must address in making these decisions. Most prominent is the equitable allocation of risk among the parties. Moreover, P3 agreements often provide the team more flexibility to innovate in designing, building and maintaining this asset, which some public agencies have seen as an advantage to the P3 approach.

The IIJA did not feature a significant restructuring of federal P3 policy, but did include a number of provisions helpful to owners wishing to explore and use them. These include improvements to the TIFIA and RRIF loan processes, doubling the cap for Private Activity Bonds and providing enhanced technical assistance to state and local agencies. As noted, the IIJA also requires greater use of value-for-money (VfM) analyses. The new Build America Center, funded by the Federal Highway Administration and for which ARTBA is a stakeholder partner, is compiling best practices and model approaches to VfM.

Because P3 engagement remains a decision made at the state or local level, we still see a wide range of interest, from those states or localities highly experienced in P3 delivery to those with no enabling legislation and little inclination to pursue it. At ARTBA's annual P3s in Transportation Conference this past July, attendees heard from officials and practitioners representing states in various positions on

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that spectrum, including those more experienced like Virginia, Maryland and North Carolina, and others like Louisiana and Georgia who are beginning to embrace the P3 delivery method.

The Build America Bureau, which administers U.S. DOT's credit programs and offers technical assistance for project development, advises that the P3 pipeline remains active as we settle into the IIJA's second year. They are currently working with sponsors of four P3s seeking roughly $4.3 billion in loans for projects totaling approximately $10.2 billion. Three are seeking TIFIA loans and one is seeking a RRIF loan. Two are highway projects and two are transit-oriented development projects.

Interest in the TIFIA has in fact remained strong since Congress reauthorized the program through the IIJA. Since enactment of the law, U.S. DOT has announced TIFIA loans for surface transportation projects in several states, including California, Indiana, Louisiana, Maryland, Minnesota, New York, Oklahoma, Texas, Virginia and Washington. This activity reaffirms ARTBA's longstanding position that these types of financing options provide a viable and valuable supplement to core federal investment.

2. In an effort to expedite project permitting, the IIJA permanently authorized the Federal Permitting Improvement Steering Council, which is tasked with coordinating project reviews among federal agencies. How would you assess the effectiveness of the Permitting Council?

    a. Has its involvement in projects helped to address concerns about permitting delays?

ARTBA has supported the Federal Permitting Improvement Steering Council (FPISC) since its creation as part of the Fixing America's Surface Transportation Act in 2015 and was pleased to see it authorized as part of the IIJA. The FPISC's creation of its permitting dashboard is an effective tool that allows users to identify specific projects and find out exactly where they are in the review and approval process. This makes it easier to track project timelines. Dashboard users can also get information regarding lead agencies, project sponsors and points of contact.

The FPISC permitting dashboard helps to address concerns about permitting delays by letting interested parties know where in the review process a project stands. This increased transparency allows policy makers and others concerned with unnecessary project delays to pinpoint solutions and identify how best to alleviate choke points. While these tools bring much needed clarity to the project delivery process, it is uncertain the FPISC has made a measurable impact on reducing the amount of time associated with the process. As such, we urge Congress and the administration to continue working together to tangibly reduce future project delays.

3. Inflation, supply chain disruptions, and a tight labor market are continuing to present challenges to state and local agencies and their partners in delivering infrastructure projects. How have these challenges affected your work?

    a. What suggestions do you have for addressing them?

Since the latter part of 2021, the transportation construction industry has dealt with unprecedented cost spikes and limited availability of key commodities, an outgrowth of the pandemic. While we

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continue to see wide variations across states and regions, ARTBA's National Materials Dashboard currently shows a 10.7 percent increase over a year ago in costs for key materials used in highway and street construction. Based on data from the Bureau of Labor Statistics, this dashboard has shown a year-to-year increase of well over 20 percent earlier in 2022.

While ARTBA has described the overall effect of inflation on the IIJA's first year, it must be noted that this trend has disproportionately harmed numerous smaller specialty contractors, subcontractors and suppliers (including participants in the Disadvantaged Business Enterprise program), who made contractual commitments to deliver certain materials and/or services prior to these cost spikes. Many have faced fiscal calamity because of it, endangering what should be a valuable and vibrant segment of the industry.

ARTBA has strongly urged the U.S. Department of Transportation (U.S. DOT) to modernize and harmonize its policies by allowing its modal agencies to provide federal-aid funding for supply chain-related relief when appropriate. Thus far, Federal Highway Administration (FHWA) has declined to revisit its prohibition for doing so, while the Federal Transit Administration (FTA) has indicated funds "may be available" to its recipients "to pay for the increased cost attendant to contract modifications" for this purpose. We believe the latter approach will better enable the industry and its public sector partners to achieve the IIJA's opportunities while surmounting the often-extreme challenges in materials costs and availability.

Similarly, we ask that Congress clarify that state and local governments can use funds from the American Rescue Plan Act for infrastructure projects, including project-specific relief as described above.

Finally, FHWA maintains the ability to declare shortages of certain materials, thereby enabling state transportation agencies to utilize non-compensable delays for contractors on affected projects. FHWA should show a greater willingness to take this approach, which will minimize the harm to contractors when shortages occur that are beyond their control, such as that for cement in Midwestern states recently. Again, this will help preserve the IIJA's economic benefits.

Senator Cramer:

1. Congress included in the Infrastructure Investment and Jobs Act (IIJA) codification of the "One Federal Decision" approach to streamlining and expediting the environmental review process. The One Federal Decision is critical to reducing bureaucratic delays and allowing transportation infrastructure projects to be completed in a much more expeditious and straightforward manner. Despite this progress, I'm concerned the federal permitting process still takes too long and am discouraged by the lack of action from this administration to utilize the permitting efficiencies Congress granted them.

    a. Can you describe how implementing the environmental review and permitting reforms included in the One Federal Decision could help alleviate rising costs associated with delivering projects without jeopardizing environmental protections?

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One Federal Decision (OFD) makes changes to the National Environmental Policy Act's (NEPA) process but does not alter any of its requirements. NEPA's environmental protections are the same under OFD as they were before it was enacted. Implementing OFD alleviates rising costs by reducing the amount of time it takes to complete the NEPA process, while maintaining the law's environmental protections.

OFD requires all federal agencies participating in a project review to develop a single document, sets page limits for documents and sets time limits on both permitting decisions as well as the review process itself. For the most complex projects, those requiring an environmental impact statement (EIS), OFD sets a goal of two years for completion. According to the White House Council on Environmental Quality (CEQ), transportation projects currently take between five to seven years to complete their EIS.

b. Building upon the One Federal Decision, how can we further improve and simplify the federal permitting process to eliminate the added cost of delays and allow for more efficient project delivery?

Congress should ensure federal agencies are taking the goals of OFD into account when they propose or rollback regulations. Currently, many regulatory initiatives are working against OFD by adding time to the project review and approval process. Specifically, CEQ is in the process of rolling back NEPA improvements promulgated in 2020. Congress and President Biden included OFD in the IIJA to alleviate regulatory confusion, project delays and bureaucratically-induced costs associated with NEPA. Unfortunately, this rollback will undermine congressional intent and preserves frustrations in the NEPA process that often features excessive litigation over projects and procedural minutiae. The public bears these costs in the form of delayed projects, higher costs, and regulatory uncertainty.

Additionally, there are a host of other regulatory issues which could impose additional delays on the project review and approval process. These include:

- **New Buy America program requirements in need of clarification and guidance from the administration;**
- **The Environmental Protection Agency and U.S. Army Corps of Engineers' forthcoming final rule on "Waters of the United States;"**
- **A project labor agreement mandate on direct federal projects of $35 million or more; and**
- **The Department of Labor's proposed expansion of the Davis-Bacon Act.**

All of these regulatory efforts will impact project delivery timelines. If the IIJA's goal of a two-year completion time for the review and approval process is to be realized, Congress should direct all federal agencies to consider whether or not their efforts will increase project delays.

2. Congress included the Build America Buy America Act (BABAA) in the IIJA, expanding the scope of domestic sourcing requirements to all construction materials on federally assisted projects. This is a step in the right direction to incentivize the growth of America's domestic manufacturing, especially for the long term. However, I understand there are practical challenges associated with the requirements. These challenges include, in some cases, limited

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availability of construction materials and a lack of guidance regarding the classification of specific materials. Congress did allow federal agencies to give waivers to provide time for people to adjust to the new requirements and manage some of the short-term impacts.

a. Are the waivers what the transportation construction industry needs to be able to actually build projects?

b. Do you have any suggestions to help make these requirements more workable?

BABAA has in fact emerged as a significant implementation challenge in the IIJA's first year. ARTBA recognizes and supports the clear congressional intent to grow domestic manufacturing capacity in the long-term. Our concern relates to the potential for short-term disruptions of projects emanating from the IIJA's new requirements in this area.

For more than 40 years, Buy America has required a domestic manufacturing process for iron, steel and certain manufactured products permanently incorporated into federal-aid highway and transit projects. The IIJA expanded Buy America coverage to five categories of construction materials (non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall). After U.S. DOT deferred this new requirement for six months, it took effect on November 10. At the same time, the department proposed narrow waivers from Buy America for items falling under modest de minimis thresholds and for the smallest of federal-aid projects. It proposed waiving the construction materials requirement for projects in advanced stages of procurement or for which contracts were already in place.

These waivers, while responsive to some issues ARTBA has raised during this rulemaking stage, leave numerous unanswered questions, all of which underscore our concerns about disrupting IIJA-funded projects. These include:

- **<u>Lack of a centralized, national effort to assess the domestically-made availability of products falling under the five categories of construction materials listed above</u>. Some state departments of transportation have undertaken this task, but for consistency and economy of scale it would be preferable for an assessment national in scope.**

- **<u>Dearth of clear guidance on the new requirements, to ensure consistent implementation by all FHWA division offices, FTA regional offices and state and local transportation agencies</u>. The Made in America Office (MIAO), part of the Office of Management and Budget, issued preliminary, government-wide guidance on BABAA implementation April 18. There now seem to be uncertainties as to when we can expect more detailed guidance, and which federal entity (in this case MIAO or U.S. DOT) will be responsible for drafting and disseminating them. Unfortunately, as state agencies have begun implementing the new coverage of construction materials, ARTBA has noted numerous inconsistencies across states.**

- **<u>Continued potential for significant administrative costs and delays if contractors must document the origin of small, inexpensive commercially-available off-the-shelf (COTS) products that exceed the proposed de minimis thresholds</u>. U.S. DOT's proposed de minimis waiver addresses this issue to an extent, but contractors within ARTBA's membership have**

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made clear the COTS issue will continue to be a problem on numerous projects, particularly those that are larger and will easily exceed the proposed de minimis thresholds.

- **Ambiguities in the waiver process specific to particular projects and products. This process, which by executive order now requires MIAO to review and assess all waiver requests, must be transparent and expeditious, or else numerous projects will inevitably be delayed.**

Finally, we note that Buy America coverage of construction materials went into effect on November 10, and the comment period for the two related packages of U.S. DOT waivers closed November 20. At this writing, we are still uncertain as to when, and in what form, these waivers will actually take effect. Meanwhile, numerous state transportation agencies are letting IIJA-assisted projects for which the parameters of Buy America coverage are critical.

We urge this committee to engage with MIAO and U.S. DOT to seek clarity in these areas. The IIJA's robust investment levels should enhance opportunities in domestic manufacturing, as is the intent of Congress. However, disrupting projects based on unclear (or unrealistic), short-term domestic preference objectives would undercut the economic benefits Congress intended, while doing little to advance the purpose of "Build America, Buy America" itself.

Senator CARPER. Thanks very much for your testimony, especially for that ad lib at the end. We spent the better part of our business meeting yesterday lauding Senator Inhofe, one Democrat and one Republican after the other. One of my favorite sayings is, flattery won't hurt you if you don't inhale.

So I would just say to my friend Jim, don't breathe in too deeply for the next month or so, because it might hurt you.

Ali, we are going to hear from you and Gary next, then we will take our questions.

Go ahead, Ali Mills.

STATEMENT OF ALI MILLS, PRESIDENT, PLUM CONTRACTING, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Ms. MILLS. Chairman Carper, Ranking Member Capito, and members of the Committee on Environment and Public Works, thank you for inviting me to testify on this vitally important topic.

My name is Ali Mills. I am the President of Plum Contracting in Pennsylvania and an active member of Associated General Contractors of America, AGC.

Plum Contracting is a family operated business for 42 years located just east of Pittsburgh, Pennsylvania. In that time, we have become a high valued highway and bridge contractor in Pennsylvania while also having a successful subcontracting division installing highway edge drains along the East Coast.

I want to start by thanking the Committee for their work and leadership in the development of the IIJA. The IIJA represents the most significant infusion of investment in our infrastructure since the enactment of the interstate highway system in the mid-1950s.

I also want to thank the Committee for continuing to prioritize formula dollars to States through the core highway formula programs and ask that you continue to do so in the future, rather than creating new grant programs, especially discretionary ones.

A recent survey of AGC members found that 93 percent of the construction companies are experiencing long lead times and/or allocations for construction materials. Infrastructure project costs continue to climb in rising construction material prices and shortages. Material price increases have doubled or even tripled in some cases. Supply chain disruptions from the pandemic have inflated the cost of construction materials and made project delivery schedules and product availability more uncertain.

Today, my company is experiencing an unprecedented burden with bidding and procurement of new projects. We are bidding jobs, plugging numbers because suppliers will not quote projects due to fluctuations in material pricing or lack of material supply. We are seeing suppliers quote projects but not sign purchase orders so they are not held responsible for honoring the price if material prices do increase.

Once we begin construction, the new normal is delays on a project because of supply issues. From a project scheduling perspective, it has turned into a nightmare. As you know, the IIJA included the Build America Buy America Act, which expands domestic sourcing requirements to all construction materials on federally assisted projects. I want to be clear: AGC supports sensible efforts to encourage the growth of America's domestic manufacturing capacity to restore balance to the supply chain. However, these new requirements have created significant confusion among industry about the difference between a construction material and a manufactured product and what manufacturing processes must occur domestically for construction materials.

To address this issue, U.S. DOT must identify a specific list of which construction materials will have to be Buy America compliant, and which materials will be considered a manufactured product. To date, they have not done this.

There is also heartburn within the construction industry about potential project delays due to the need for a Buy America waiver, and the low likelihood of being granted one based on history. While we still await clarification from OMB, the initial director of the Made in America office has since left just weeks before the implementation has begun. To put it nicely, implementation of a new Buy America requirement is off to a rocky start, and the construction industry is very concerned and confused.

A great way to maximize investment in the IIJA would be to implement the environmental review and permitting reforms that were mandated in the bill. By implementing these provisions, we believe that the costs associated with delivering projects will be reduced without jeopardizing environmental protections.

AGC also has concerns about recent changes to the National Environmental Policy Act in the Council on Environmental Quality's phase one rulemaking. These changes add bureaucratic steps in an already burdensome and slow process, require more time consuming analysis, increase litigation risks for project decisions, and encourage agencies to impose requirements that go beyond CEQ regulations, and would slow agency decisionmaking and discourage the transformational investments needed across the country.

Labor shortages also continue to be a top concern for the industry, with most construction firms expecting labor conditions to remain tight. Despite firms increasing pay and benefits, the work force shortage continues. The industry is facing the effects of decades of policies directing students to attend 4 year institutions as the only career options.

Again, I thank the Committee for the opportunity to testify today. I appreciate its continued efforts to help improve the Nation's infrastructure and enact policies that create good paying jobs in America. I look forward to answering any questions.

[The prepared statement of Ms. Mills follows:]

Written Statement of

Ali Mills
President
Plum Contracting

On behalf of

The Associated General Contractors of America

to the

United States Senate

Committee on Environment and Public Works

For a hearing on

"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"

November 30, 2022

The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

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I. Introduction

Chairman Carper, Ranking Member Capito, and members of the Committee on Environment and Public Works thank you for inviting me to testify on this vitally important topic. My name is Ali Mills. I am the President of Plum Contracting in Pennsylvania and an active member of the Associated General Contractors of America (AGC).

AGC is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

Plum Contracting, Inc. is a family operated business for 42 years located just east of Pittsburgh, Pennsylvania. In that time, we have become a high valued highway and bridge contractor in Pennsylvania while also having a successful subcontracting division installing highway edge drains along the east coast.

In my testimony today, I will discuss current issues facing the construction industry just a year after passage of the Infrastructure Investment and Jobs Act (IIJA). I want to take a moment to thank the Committee for their work and leadership in the development of that bill. The IIJA represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's.

II. Maximize the Benefits of the IIJA

Supply Chain Challenges

A recent survey of AGC members found that 93 percent of construction companies are experiencing long lead times and/or allocations (less-than-full shipments) for construction materials[1]. Infrastructure project costs continue to climb amid rising construction materials prices and shortages. Material price increases have doubled or even tripled in some cases[2]. The construction industry is facing material challenges that reach far and wide. Supply chain disruptions from the pandemic have inflated the cost of construction materials and made project delivery schedules and product availability more uncertain.

As a result, crucial infrastructure projects across the country run the risk of delay. Construction firms, in situations where they are able to, will pass along the rising materials prices in order to remain successful. Unfortunately, the lead time in bidding these projects is so long that they are unable to predict the availability and price of some of these materials. Today, we are experiencing an unprecedented burden with bidding and procurement of new projects. We are bidding jobs plugging numbers because suppliers will not quote projects due to fluctuations in material pricing and lack of material supply. We are seeing suppliers quote projects but not sign purchase orders so they are not

[1]https://www.agc.org/sites/default/files/users/user33405/Buy%20America/2022%20Materials%20Survey%20Results%20Data.pdf
[2]https://www.agc.org/sites/default/files/users/user21902/Construction%20Inflation%20Alert%20Cover_Jul2022_V4.pdf

held responsible honoring their price if material pricing increases. Once we begin construction, the new "normal" is delays on the project because of supply issues. From a project scheduling perspective, it has turned into a nightmare.

In addition, companies are unable to foresee things like significant world events, spiking oil prices, and soaring inflation and therefore, in some instances, are forced to absorb these increases because there is no price escalation clause available to them. Currently in PA, there are only escalation clauses for steel & asphalt, and diesel fuel adjustments for larger quantity items of work on projects. When a supplier raises their prices, Plum Contracting is forced to absorb this cost hindering the profitability of the project. Long term this is unsustainable for companies such as ours.

The impacts of this have been especially devastating to small and DBE construction firms that lack the resources to absorb these unexpected costs. While contractors are in the business of managing risk, the events and circumstances of the last two years have led to such unparalleled unpredictability in the supply chain and market that contracting firms of all sizes are at greater risk now than in recent history of business failure.

Implementation of the Build America, Buy America Act (BABAA)

AGC supports sensible efforts to incentivize the growth of America's domestic manufacturing capacity to restore balance to the supply chain. As you know, the IIJA included the Build America, Buy America Act (BABAA) which expands domestic sourcing requirements to all construction materials on federally assisted projects such as affordable housing, drinking water, transportation projects and more.

The Office of Management & Budget (OMB), who oversees implementation of BABAA, issued preliminary guidance defining construction materials on April 18 and told agencies to include BABAA requirements in all new contracts on May 14. OMB issued these "rules" before conducting significant research on the supply chain, as it put forth a request for information within the guidance and has yet to issue final guidance. The Department of Transportation (U.S. DOT) initially issued a transitional waiver for six months which has since expired. We believe that U.S. DOT should issue another transitional waiver of six months to a year, or until the Department can provide clarifying guidance and ensure there is adequate time for public owners and contractors to understand these new requirements.

There is still significant confusion among industry, federal, state and local agencies remain regarding the difference between a construction material and a manufactured product and what manufacturing processes must occur domestically for construction materials. To address this issue, U.S. DOT must identify a specific list of which construction materials will have to be Buy America compliant and which materials will be considered a manufactured product. To date, they have not done this.

While we still await direction on what specific materials are a construction material versus a manufactured product, OMB added new uncertainty for the construction industry. For example, their April 18th, 2022 Memo[3] requires the Federal Highway Administration (FHWA) to reevaluate its existing 1983 manufactured products waiver. To date, FHWA has not issued a request for comment on such waiver.

[3] https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf

There is also heartburn within the construction industry about needing a Buy America waiver in the future and the low likelihood in being granted one based on history. To make the waiver process even more problematic, because of an executive order, federal agencies must submit waivers for items not made in America to OMB. They assure us though that OMB must approve or deny the waiver within 15 days. However, this does not detail when U.S. DOT or another agency received the waiver request first and only starts the 15-day deadline when the agency actually transmits the waiver request to OMB. We ask that the Committee conduct thorough oversight to ensure that the waiver process is transparent and does not get caught up in politics of the White House and OMB.

OMB and U.S. DOT should implement these new requirements on a product-by-product basis, after identifying manufacturing capacity. However, it appears as though they are choosing to charge full speed ahead amidst supply chain woes – like long lead times and material allocations. While we still await clarification from OMB, the initial Director of the Made in America Office has since left just weeks before implementation begins. Put nicely, implementation of the new Buy America requirements is off to a rocky start and the construction industry is very concerned and confused.

One thing FHWA has done is a Request for Information on the availability of Buy America compliant electric vehicle (EV) charges and then subsequently a proposed waiver for them. AGC offered support for such waiver.[4] However, it is disappointing that the agency did not undertake outreach and research to a similar degree of rigor on other manufactured products and construction materials subject to BABAA.[5] While this waiver will address the challenges present with EV charging

[4] https://www.regulations.gov/comment/FHWA-2022-0023-0037
[5] On November 24, 2021—14 days after President Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law—USDOT and the Department of Energy published an RFI seeking comments within 47 days to discern whether EV charging stations could meet BABAA requirements. FHWA, on the other hand, issued an RFI to help understand the possible impacts of BABAA requirements on the vast field of construction materials utilized on federal-aid highway projects on July 28, 2022—225 days after IIJA enactment—and sought comments within 21 days.

stations, the manufactured product is merely one example of a much larger industry-wide problem when it comes to meeting these new requirements.

Greenhouse Gas Performance Measure

On July 15, 2022, FHWA proposed a rule to establish a greenhouse gas performance measure. During debate of the IIJA and prior surface transportation laws, Congress considered proposals that would provide FHWA with the authority to create a performance measure on greenhouse gas emissions but ultimately rejected them. AGC believes that this greenhouse gas performance measure would be a one-size-fits-all mandate that would limit a state's ability to choose transportation projects that fit its unique needs. We believe FHWA should follow congressional intent and refrain from reviving policy ideas that Congress considered and ultimately rejected.

A greenhouse gas performance measure will limit a state's options to connect people to jobs, healthcare, and education. The transportation needs faced by Americans living in urban areas are not the same as those living in rural parts of the country. Requiring New York to invest in the New York City subway rather than a roadway project might work for the transportation needs of their state. However, forcing my hometown of Greensburg, Pennsylvania to build a new bike lane instead of adding new roadway capacity would be impractical because of the hilly terrain and cold winters.

If the Administration insists on moving forward with this rulemaking, AGC believes that they should provide an exemption for low-population density states and focus on the states with the highest greenhouse gas emissions. Likewise, we believe that FHWA should not penalize states for not meeting their greenhouse gas emissions targets.

Disadvantaged Business Enterprise (DBE) Program

On July 21, 2022, the U.S. Department of Transportation announced a notice of proposed rulemaking on the Disadvantaged Business Enterprise (DBE) Program. AGC represents DBE and non-DBE firms and has identified many areas of agreement on how to improve the DBE program. For example, we are pleased that the Department is proposing to increase the personal net worth cap and exclude retirement assets from the calculation. DBE firms should be able to grow without punishing the owner of the company for planning for retirement. Likewise, we are pleased that the Department is taking steps to streamline the interstate certification process. This will enable these small companies to focus more of their time and resources on running their construction company and not forcing them to spend time on a duplicative paperwork process.

AGC supports better alignment of the DBE program with the federal small business program under the Small Business Act. However, AGC warns U.S. DOT against a wholesale substitution of the existing rules for DBE size determination with that of the U.S. Small Business Administration's (SBA) without careful consideration and study.

AGC believes that U.S. DOT should ensure that DBE availability and capacity in an area does not diminish, which would undermine efforts to achieve programmatic goals. That is why AGC supports aligning the DBE statutory size standard—currently capped at $28.48 million gross annual revenue—with NAICS code 237310 (Highway, Street, and Bridge Construction) that sets a $39.5 million cap and is revised for industry trends and inflation at least every five years by the SBA.

And, rather than limiting DBEs to certain sub-sizes as specialty contractors—as NAICS codes for specialty contractors are generally capped at a $16.5 million gross annual revenue threshold—AGC supports maintaining just the one singular code and its accompanying threshold to avoid administrative confusion that could lead to DBEs being prematurely removed from the program. Also, DBE contractors can work as prime contractors on some transportation construction contracts and specialty contractors (i.e., subcontractors) on others. That flexibility maximizes their opportunity to bid on and win federally assisted transportation construction contracts.

Such a change is not unprecedented. In fact, Congress enacted this approach in section 150 of the Federal Aviation Administration Act of 2018 for the mode's DBE program.

As it stands, however, NAICS codes for the specialty construction sector were designed for vertical building construction, not transportation construction contractors. These codes do not account for the fact that in transportation construction, jobsites can span many miles and require more heavy equipment than for constructing a building. For example, to face a cap of $16.5 million can be especially challenging for a structural steel contractor that specializes in bridge work, as steel remains at elevated prices, is a ubiquitous material in bridges and whose placement requires significant investment in heavy equipment.

Instead of allowing room for DBE contractors to grow, the program is further handicapping their success. Instead of making it easier for prime contractors to utilize specialty DBE firms, it is making it more difficult. Finally, it is making it harder for states to meet or even exceed their DBE goals by limiting the work these DBE firms are able to perform. AGC looks forward to working with Congress and U.S. DOT to address the unintended consequences of the use of NAICS codes in transportation construction.

In my state of Pennsylvania, a very reputable DBE has been suspended from the program when ownership changed between one woman to another woman. The current owner has had numerous appeal hearings that have all been unsuccessful. She said the process has left her feeling that her and her business are being discriminated against by the certifying agency. If DBE contractors are forced out of the program it could put them out of business and also make it harder for the prime contractor and the state of Pennsylvania to meet its DBE goals. FHWA and Congress should prioritize policies that will attract new entrants into the program and policies that make it easier to do business with existing DBEs.

Facilitate Efficient Project Delivery

AGC believes a great way to maximize the investment in IIJA would be to implement the environmental review and permitting reforms that were mandated in the bill. The complicated operations of these current laws and the intersection of their requirements can delay projects that would improve the overall safety and efficiency of the surface transportation system. By implementing these provisions, we believe the costs associated with delivering projects will be reduced without jeopardizing environmental protections.

Specifically, we ask that the administration implement the provisions that would:

- Codify the One Federal Decision policy;
- Allow for utility relocation in the right of way prior to the National Environmental Policy Act (NEPA) review being completed; and
- Extend the time period for a state to assume the responsibility for small projects, that have little or no environmental impact, from a term of not more than 3 years, to a term of 5 years.

AGC also has concerns about recent changes to the National Environmental Policy Act (NEPA) in the Council on Environmental Quality's (CEQ) Phase I rulemaking. These changes add bureaucratic steps in an already onerous and slow process, require more time-consuming analyses, increase litigation risk for project decisions, and encourage agencies to impose requirements that go beyond CEQ regulations and would slow agency decision-making and discourage the transformational investments needed across the economy.

Federal agencies are not just making changes to NEPA, they are systematically reversing all streamlining reforms from recent years as well as introducing additional requirements that will delay projects. This can be seen in the major permitting programs such as Clean Water Act section 404 permitting, section 401 water quality certifications, threatened and endangered species, and migratory birds.

The promises to deliver timely and sorely needed infrastructure under the IIJA and the Inflation Reduction Act will be significantly challenged if projects are delayed and, in turn, face steep cost increases that block their construction. These delays will make it harder to achieve climate change goals, to make infrastructure more resilient, and to better prepare and protect communities from natural disasters, especially disadvantaged communities.

Buy Clean

Under Executive Order 14057 and provisions of the Inflation Reduction Act, federal agencies are looking at "Buy Clean" programs that would force material/product choices based on embodied carbon using Environmental Product Declarations (EPD). EPDs were initiated by industry to present general information about the environmental attributes of a product, including the carbon emissions associated with its development.

While EPDs are a tool for measuring embodied carbon, they can be varied in their approach, do not provide a full life cycle assessment, and are not universal. In addition, EPDs have limited functionality for making or comparing important design choices (such as for safety or performance) or calculating the embodied carbon of an entire infrastructure project—and/or comparing it to another project.

Buy Clean programs are new and have not been fully implemented even in the limited states - including California - that have begun to introduce them. Their impact on the supply chain is unknown. As is whether they will require more staff to administer and change traditional roles within the infrastructure development team - possibly resulting in new professional services or roles for the general contractor (e.g., a new environmental review akin to determining how to actually build a project) and introducing risk.

AGC asks that Congress and the Administration allow for an appropriate transition time to these new requirements. The uncertainties associated with Buy Clean programs could have serious implications if approached in a rushed/haphazard manner. In addition, we ask that they work with industry to implement these requirements. Recognizing the proactive role that industry has played in the development and adoption of EPDs, AGC encourages market-based incentives associated with embodied carbon. Furthermore, the government should continue to include industry in the EPD process moving forward, reward private sector innovation, and recognize the importance of consensus-based processes for industry standards.

III. Provide Flexibility for States and Construction Companies

Prioritize Formula Funding rather than Discretionary Funding

Historically, the federal-aid highway program has been federally funded and state administered. This ensures maximum flexibility for states to address their transportation needs and allows them to "flex" funding between programs when necessary.

We thank the Committee for their work on the IIJA, specifically on the surface transportation reauthorization that the Committee produced that was included in the final bill. We also thank the Committee for continuing to prioritize formula dollars to states through the core highway formula programs and ask that you continue to do so in the future rather than creating new grant programs - especially discretionary ones.

Continue to Allow Flexibility for States to Meet their Transportation Needs

AGC believes that FHWA must continue to provide state and local governments with the flexibility to address and prioritize their unique transportation needs as Congress intends. As each area of our country is diverse and unique, so are the transportation needs of each community. When standardized transportation solutions do not work in a community, too often the contractor gets blamed despite often not being involved in the selection or design of a project.

Earlier this year FHWA released a guidance memo highlighting, among other things, that states should focus exclusively on maintenance and repair work on existing roadways before building more or new roads.[6] This memo has caused confusion with state DOTs about the mismatch between this

[6] https://www.fhwa.dot.gov/bipartisan-infrastructure-law/building_a_better_america-policy_framework.cfm

guidance and the lack of corresponding requirements for such measures by the IIJA. This policy, which was rejected by Congress in IIJA negotiations, paints a false narrative based upon FHWA's own data which states that 80% of roadway construction projects already repair existing roads and bridges.[7] States are already fixing it first, thanks to the policies like performance management requirements – put in place by Congress. Our nation's interstate system was built and designed over 50 years ago, and it is past time that states modernize them to meet the current needs of the cities and populations they serve. Flexibility to add new capacity to meet these changed needs is crucial.

COVID Relief Funds

AGC also asks that Congress clarify that several categories of infrastructure investments - including transportation projects - and disaster relief are eligible for unspent COVID-19 relief dollars, eliminating ambiguity as to whether such projects could receive these funds. The COVID-19 pandemic ripped a gaping hole in the budgets of many state and local governments, making this assistance crucial as the nation's economic recovery continues. We applaud the U.S. Senate for passing a bill to clarify this eligibility and call on the House of Representatives to pass this legislation.[8] We thank Senator Padilla for his leadership on this issue and other members of this Committee for their support of this legislation.

Additionally, AGC led a coalition letter to the Treasury Department asking that they clarify the use of Coronavirus State and Local Fiscal Recovery Funds from the American Rescue Plan Act (ARPA) by state and local governments to mitigate the effects of the supply chain. Allowing the use of these funds would these entities to mitigate the effects of supply chain delays and shortages and the effects

[7] See Appendix Figure 1 and Figure 2
[8] S.3011 and H.R. 5735

they are having on project costs. These continuing supply chain shortages and material price increases clearly initiated as a direct result of the pandemic, and we believe that this request falls well within the Congressional intent of this funding.

IV. Support the Construction Workforce

State of the Construction Workforce

The construction industry's labor shortages remain severe with most construction firms expecting labor conditions to remain tight. Despite firms increasing pay and benefits, the workforce shortage continues. A 2022 AGC survey found 83 percent of firms are having a hard time filling some or all salaried or hourly craft positions and that contractors have a low opinion of the pipeline of future workers. The industry is facing the effects of decades of policies directing students to attend four-year institutions as the only career option.

Currently only 21 percent of all total federal education funding goes to career or workforce education with the majority going to traditional four-year colleges.[9] That is why AGC supports increased funding for Career and Technical Education funding (Perkins Act.). Perkins is the primary federal program for developing and supporting career and technical education programs for secondary and post-secondary students. Exposing younger individuals to construction skills and careers is critical. However, these programs, especially construction focused ones, are expensive to operate and administer for local schools. And these programs face rising inflationary pressure and lingering pandemic impacts.

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[9] https://opportunityamericaonline.org/

I am proud to be a female in a leadership role in the construction industry. I appreciate the opportunities I have had to attend career fairs where I can personally share my roots in this industry and the opportunities that await women who consider a career path in construction at any level. While the industry is making efforts to attract more women in construction the numbers continue to show a majority of construction workers are men. However, the pay gap for women in construction is significantly less than other fields. Women in construction earn 99.1 percent[10] compared to men in construction whereas the gender pay gap is 83.1 percent in other fields.[11]

The Jumpstart Our Businesses by Supporting Students (JOBS) Act of 2021

The bipartisan Jumpstart Our Businesses by Supporting Students (JOBS) Act of 2021, or S.864, is one legislative initiative that could help make a tangible impact on this problem. This bill would expand Pell Grants to all individuals seeking a career. These grants provide billions of federal aid to over seven million students in post-secondary programs of at least a semester in length. Currently, Pell Grant eligible programs must be a full-time semester in length which has largely limited student's ability to use Pell Grants to pursue short-term career education programs. Emphasizing competency and value of a program over instruction time metrics would allow for a host of craft worker industry-recognized certificate programs to become eligible for federal needs-based aid. I know many of you on this Committee are cosponsors of this legislation and we thank you for your support.

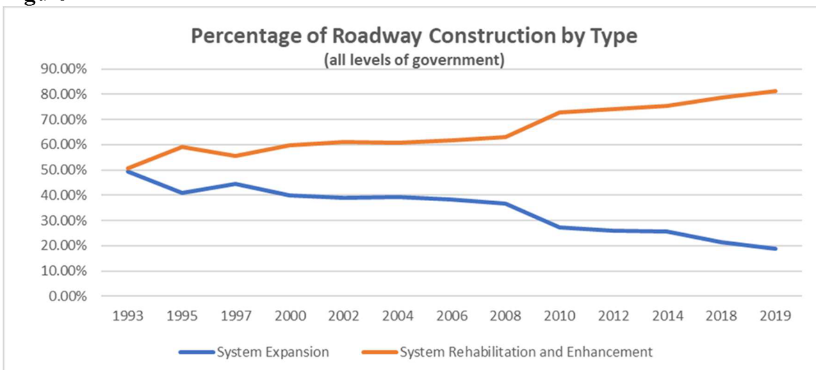
V. Conclusion

[10] https://www.bls.gov/opub/reports/womens-databook/2019/home.htm
[11] https://www.bls.gov/opub/ted/2022/median-earnings-for-women-in-2021-were-83-1-percent-of-the-median-for-men.htm

The IIJA provides market opportunities for transportation contractors, heavy contractors, building contractors and utility contractors. And most importantly, it demonstrates to our existing and future workforce that there is sustainable work in the years to come. This historic level of funding in our infrastructure when combined with recovering from a global pandemic, addressing a supply chain crisis, and implementing new federal requirements that were a part of the IIJA will create challenges for those of us tasked with rebuilding our infrastructure. I thank the Committee for the opportunity to testify today. I appreciate its continued efforts to help improve our nation's infrastructure and enact policies that create good paying jobs in America. I look forward to answering any questions you may have.

Appendix

Figure 1[12]



[12] (https://www.transit.dot.gov/research-innovation/status-nations-highways-bridges-and-transit-condition-and-performance
https://www.fhwa.dot.gov/policyinformation/statistics/2018/fa10.cfm
https://www.fhwa.dot.gov/policyinformation/statistics/2019/fa10.cfm)

Figure 2[13]
(Spending in Thousands)

STATE	New Capacity (New Construction, Added Capacity, Major Widen, Minor Widen, New Bridge)	Total Spending	New Capacity as Percent of Total
Alabama	$207,881	$1,475,119	14.09%
Alaska	$111,115	$764,100	14.54%
Arizona	$974,995	$1,448,808	67.30%
Arkansas	$273,295	$924,723	29.55%
California	$136,628	$4,589,484	2.98%
Colorado	$132,782	$1,156,752	11.48%
Connecticut	$63,088	$924,960	6.82%
Delaware	$72,776	$586,608	12.41%
Dist. of Col.	$0	$456,835	0.00%
Florida	$1,664,800	$6,683,645	24.91%
Georgia	$460,056	$1,787,653	25.74%
Hawaii	$88,266	$239,670	36.83%
Idaho	$21,725	$660,149	3.29%
Illinois	$320,062	$3,186,325	10.04%
Indiana	$329,653	$1,552,336	21.24%
Iowa	$353,418	$1,009,846	35.00%
Kansas	$111,455	$557,572	19.99%
Kentucky	$509,449	$1,568,834	32.47%
Louisiana	$264,211	$887,562	29.77%
Maine	$4,508	$566,788	0.80%
Maryland	$271,139	$1,586,175	17.09%
Massachusetts	$5,139	$926,822	0.55%
Michigan	$51,378	$3,109,167	1.65%
Minnesota	$165,889	$1,191,844	13.92%
Mississippi	$161,918	$878,062	18.44%
Missouri	$55,352	$904,598	6.12%
Montana	$60,821	$524,006	11.61%
Nebraska	$12,704	$838,786	1.51%
Nevada	$343,017	$688,263	49.84%
New Hampshire	$55,658	$270,456	20.58%
New Jersey	$355,568	$2,941,537	12.09%
New Mexico	$79,321	$430,734	18.42%
New York	$214,189	$4,457,620	4.81%
North Carolina	$2,470,163	$4,843,286	51.00%
North Dakota	$10,643	$423,023	2.52%
Ohio	$204,264	$2,284,656	8.94%
Oklahoma	$129,939	$1,448,763	8.97%
Oregon	$153,614	$1,015,338	15.13%
Pennsylvania	$309,475	$4,007,533	7.72%
Rhode Island	$0	$46,702	0.00%
South Carolina	$60,002	$1,901,504	3.16%
South Dakota	$27,635	$310,987	8.89%
Tennessee	$435,099	$1,246,254	34.91%
Texas	$3,056,287	$9,843,960	31.05%
Utah	$460,689	$980,391	46.99%
Vermont	$16,347	$251,802	6.49%
Virginia	$446,957	$1,527,274	29.27%
Washington	$441,481	$2,084,743	21.18%
West Virginia	$318,833	$908,893	35.08%
Wisconsin	$631,230	$1,575,772	40.06%
Wyoming	$34,647	$368,914	9.39%
Total	**17,139,561**	**84,845,634**	**20.20%**

[13] https://www.fhwa.dot.gov/policyinformation/statistics/2019/sf12.cfm

Senate Committee on Environment and Public Works
Hearing Entitled, *"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"*
November 30, 2022
Questions for the Record for Ali Mills

<u>Senator Inhofe:</u>

1. Public-private partnerships (P3s) are a key tool for agencies to achieve cost-efficiency and manage risk while leveraging private sector capital, expertise, and innovation. The Infrastructure Investment and Jobs Act (IIJA) encourages consideration of P3s, for example by requiring value-for-money analyses for large Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing projects. One year into IIJA implementation, are many states and local governments seriously considering P3s to deliver projects with IIJA funding? If not, what roadblocks are preventing them?

    I think it is too early to tell what impacts the Bipartisan Infrastructure Law (BIL) is having on alternatively financed projects. We are only through one year of funding for the BIL, and that first year included such an increase in funding compared to what states were receiving before. As a result, most states were focusing on ensuring that they had capacity to handle this increased funding while also juggling supply chain constraints and inflation.

    a. For what types of projects do you think there is the strongest potential for P3s?
    Innovative financing tools can play an important role in improving the surface transportation system, including by helping to attract private sector investment. However, these tools cannot be mistaken as replacements for any federal funding and require a source of revenue in order to be paid off. They can only serve as supplements to that funding.

    The BIL represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's. This investment will help address the over $780 billion backlog[1] of highway and bridge projects – however it will not once and for all fix our nation's infrastructure. In my experience tolling continues to be the mechanism to support P3s for roadway construction. This is why it is critical that FHWA, state DOT's and other local governments continue to provide flexibility as it relates to tolling and avoid policies that restrict its use.

2. In an effort to expedite project permitting, the IIJA permanently authorized the Federal Permitting Improvement Steering Council, which is tasked with coordinating project

[1] https://www.fhwa.dot.gov/policy/23cpr/es.cfm#chapter-1-system-assets-highways

reviews among federal agencies. How would you assess the effectiveness of the Permitting Council?
AGC is supportive of all efforts to expedite the slow project permitting process. We were supportive of the Federal Permitting Improvement Steering Council when it was first set up as a pilot under the Fixing America's Surface Transportation (FAST) Act and supported it being made permanent under the BIL. The complicated operations of environmental laws and the intersection of their requirements can delay projects that would improve the overall safety and efficiency of the surface transportation system.

AGC believes that this council has been effective in providing efficiency and transparency to large infrastructure projects that require coordination among multiple agencies. It provides a good example of how projects can be prioritized, supported, and advanced without jeopardizing environmental safeguards.

a. Has its involvement in projects helped to address concerns about permitting delays?

Delays in getting federal permits continues to be one of the biggest challenges faced by AGC construction companies. It is why we believe a great way to maximize the investment in BIL would be to implement the environmental review and permitting reforms that were mandated in the bill. The complicated operations of these current laws and the intersection of their requirements can delay projects that would improve the overall safety and efficiency of the surface transportation system. By implementing these provisions – like One Federal Decision - we believe the costs associated with delivering projects will be reduced without jeopardizing environmental protections.

However, instead of implementing these provisions the administration has added to the uncertainty coming out of Washington. The new changes to the National Environmental Policy Act (NEPA) in the Council on Environmental Quality's (CEQ) Phase I rulemaking add bureaucratic steps in an already onerous and slow process, require more time-consuming analyses, increase litigation risk for project decisions, and encourage agencies to impose requirements that go beyond CEQ regulations and would slow agency decision-making and discourage the transformational investments needed across the economy. It has created instability and made it harder to plan and manage construction projects. The time and costs associated with delivering projects must be reduced and can be done without jeopardizing important environmental protections.

3. Inflation, supply chain disruptions, and a tight labor market are continuing to present challenges to state and local agencies and their partners in delivering infrastructure projects. How have these challenges affected your work?

Critical infrastructure projects across the country run the risk of delay. A recent survey of AGC members found that 93 percent of construction companies are experiencing long lead times and/or allocations (less-than-full shipments) for construction materials. Infrastructure project costs continue to climb amid rising construction materials prices and shortages. Material price increases have doubled or even tripled in some cases. The construction industry is facing material challenges that reach far and wide. Supply chain disruptions from the pandemic have inflated the cost of construction materials and made project delivery schedules and product availability more uncertain.

Construction firms, in situations where they are able to, will pass along the rising materials prices in order to remain successful. Unfortunately, the lead time in bidding these projects is so long that they are unable to predict the availability and price of some of these materials. My company is facing an unprecedented burden with bidding and procurement of new projects. We are bidding jobs plugging numbers because suppliers will not quote projects due to fluctuations in material pricing and lack of material supply. We are seeing suppliers quote projects but not sign purchase orders so they are not held responsible honoring their price if material pricing increases. Once we begin construction, the new "normal" is delays on the project because of supply issues. From a project scheduling perspective, it has turned into a nightmare.

a. What suggestions do you have for addressing them?

Price adjustment clauses help mitigate these risks. Currently, FHWA allows states to utilize this practice – but again their use is limited depending on the state.

These price adjustment clauses can be very helpful as companies are unable to foresee things like significant world events, spiking oil prices, and soaring inflation that take place from the time we bid a project to the time we go to construction. As a result, in some instances we are forced to absorb these increases if there is no price adjustment clause available to us. Currently in PA, these adjustment clauses are limited and only for steel & asphalt, and diesel fuel adjustments for larger quantity items of work on projects. When a supplier raises their prices, Plum Contracting is forced to absorb this cost hindering the profitability of the project. Long term this is unsustainable for companies such as ours.

Senator Cramer:

1. Congress included in the Infrastructure Investment and Jobs Act (IIJA) codification of the "One Federal Decision" approach to streamlining and expediting the environmental review process. The One Federal Decision is critical to reducing bureaucratic delays and allowing transportation infrastructure projects to be completed in a much more expeditious and straightforward manner. Despite this progress, I'm concerned the federal permitting process still takes too long and am discouraged by the lack of action from this administration to utilize the permitting efficiencies Congress granted them.

    a. Can you describe how implementing the environmental review and permitting reforms included in the One Federal Decision could help alleviate rising costs associated with delivering projects without jeopardizing environmental protections?

The regulatory uncertainty coming out of Washington has created instability and made it harder to plan and manage construction projects. It is disappointing that instead of implementing the environmental review and permitting reforms included in the Bipartisan Infrastructure Law (BIL), the administration has instead chosen to add new, vague hurdles to this arduous process. The time and costs associated with delivering projects must be reduced and can be done without jeopardizing important environmental protections.

This also comes at a time when contractors, like me, are trying to navigate unprecedented inflation and supply chain constraints making it very difficult to procure construction materials. If price adjustment clauses are unavailable the contractor is forced to absorb const increases when a supplier raises their price. Implementing these environmental review and permitting reforms could help reduce some of the uncertainty that we are currently dealing with.

b. Building upon the One Federal Decision, how can we further improve and simplify the federal permitting process to eliminate the added cost of delays and allow for more efficient project delivery?

Provide regulatory certainty for the construction industry by nullifying recent changes to the National Environmental Policy Act (NEPA) in the Council on Environmental Quality's (CEQ) Phase I rulemaking. These changes add bureaucratic steps in an already onerous and slow process, require more time-consuming analyses, increase litigation risk for project decisions, and encourage agencies to impose requirements that go beyond CEQ regulations and would slow agency decision-making and discourage the transformational investments needed across the economy.

Federal agencies are not just making changes to NEPA, they are systematically reversing all streamlining reforms from recent years as well as introducing additional requirements that will delay projects. This can be seen in the major permitting programs such as Clean Water Act section 404 permitting, section 401 water quality certifications, threatened and endangered species, and migratory birds.

Congress provided significant funding to build more resilient infrastructure and combat climate change. However, you can't just wish for a greener future – you have to build it. The promises to deliver timely and sorely needed infrastructure under the BIL and the Inflation Reduction Act will be significantly challenged if projects are delayed and, in turn, face steep cost increases that block their construction. These delays will make it harder to achieve climate change goals, to make infrastructure more resilient, and to better prepare and protect communities from natural disasters, especially disadvantaged communities.

2. Congress included the Build America Buy America Act (BABAA) in the IIJA, expanding the scope of domestic sourcing requirements to all construction materials on federally assisted projects. This is a step in the right direction to incentivize the growth of America's domestic manufacturing, especially for the long term. However, I understand there are practical challenges associated with the requirements. These challenges include, in some cases, limited availability of construction materials and a lack of guidance regarding the classification of specific materials. Congress did allow federal agencies to give waivers to provide time for people to adjust to the new requirements and manage some of the short-term impacts.

   a. Are the waivers what the transportation construction industry needs to be able to actually build projects?

   U.S. DOT should provide for another 180-day temporary waiver. Again, I want to be clear that we support President Biden and Congress' goal of promoting American manufacturing and growing the domestic workforce through the Build America, Buy America provisions included in the BIL. However, we are concerned that, with historic uncertainty in the construction supply chain and lack of clarity on the specifics of this measure, the implementation of these provisions is presenting immense challenges that will ultimately lead to significant delays in the delivery of important transportation construction projects. These new requirements could not come at a worse time.

   b. Do you have any suggestions to help make these requirements more workable?

   There needs to be flexibility for state and local governments. I think you can appreciate that request representing a border state like North Dakota. While we all support growing domestic manufacturing there needs to be flexibility and room to exercise common sense. Critical infrastructure projects should not come to a halt because of a 6 month wait for a domestically made product when there is availability a few miles across the border in Canada. These delays hurt construction workers and the companies managing the projects. Smaller construction companies might not have the privilege of being able to put these workers on other construction jobs while they wait for approval of a Buy America waiver.

   Clarification on construction material vs. manufactured product. There is still significant confusion among industry, federal, state and local agencies remain regarding the difference between a construction material and a manufactured product and what manufacturing processes must occur domestically for construction materials. To address this issue, U.S. DOT must identify a specific list of which construction materials will have to be Buy America compliant and which materials will be considered a manufactured product.

There is heartburn within the construction industry about needing a Buy America waiver in the future and the low likelihood in being granted one based on history. To make the waiver process even more problematic, because of an executive order, federal agencies must submit waivers for items not made in America to OMB. They assure us though that OMB must approve or deny the waiver within 15 days. However, this does not detail when U.S. DOT or another agency received the waiver request first and only starts the 15-day deadline when the agency actually transmits the waiver request to OMB. The Committee should conduct thorough oversight to ensure that the waiver process is transparent and does not get caught up in politics of the White House and OMB.

OMB and U.S. DOT should implement these new requirements on a product-by-product basis, after identifying manufacturing capacity. However, it appears as though they are choosing to charge full speed ahead amidst supply chain woes – like long lead times and material allocations.

Senator CARPER. Thanks very much. When we do Q&A, I am going to come back to your last point about the kinds of skills sets that we are graduating students from our colleges and universities, community colleges. It is a good point. We will come back to that. Thanks for your testimony.

Mr. Johnson, the real Gary Johnson. Welcome.

STATEMENT OF GARY W. JOHNSON, P.E., VICE PRESIDENT, LAND AND QUARRY, GRANITE CONSTRUCTION COMPANY

Mr. JOHNSON. Good morning, Chairman Carper, Ranking Member Capito, and members of this Committee. Thank you for inviting me here today to discuss the implementation of the Bipartisan Infrastructure Act. I am Gary Johnson, Vice President with Granite Construction and Vice Chair of National Stone, Sand and Gravel Government Affairs Committee.

Granite is one of the largest diversified infrastructure construction and materials companies, with hundreds of locations across the U.S. In the last 3 years, we have done work in every State represented by the Committee with the exception of two States, and we are working on those two States.

[Laughter.]

Mr. JOHNSON. We are one of 400 producer members of NSSGA. Our industry operates in more than 9,000 locations, employs over 100,000 people in high paying jobs to source 2.6 billion tons of aggregates each year that are used to sustain our modern way of life and build our Nation's communities and infrastructure.

I would like to echo the comments of my colleagues here today to profoundly thank you and your staff for crafting and executing this historic law.

Senator Inhofe, we are indebted to you for your years of service. You set the stage; this is why we are here today. We appreciate that.

Senator INHOFE. Thank you.

Mr. JOHNSON. Your work to advance the bipartisan surface transportation bills over the last two Congresses set the stage for delivering the largest infrastructure investment in our lifetimes. As our country faces economic headwinds and an uncertain future, IIJA funding is laying the groundwork to keep the aggregate and the materials industry moving forward as we build resilient and sustainable communities and stronger transportation networks.

The certainty provided by IIJA through the 5 year reauthorization of our surface transportation programs allows companies like Granite to better plan and make robust investments in our people, plants, and equipment. This is also important for State departments of transportation to be able to plan their work out also.

However, with the enactment of any major legislation come challenges and opportunities. I would like to focus on four primary areas. First, Buy America. It is imperative that Federal and State partners responsible for distributing investments follow the Build America Buy America Act as written and passed by Congress. Clear guidance is needed to ensure that aggregate based products remain excluded from the implementing regulations as directed by Congress, allowing us to quickly deliver materials, keep costs low, and help grow American jobs.

Under permitting, our industry needs regulatory certainty to plan, build, and operate our facilities that supply the essential building materials. But many times we are faced with conflicting and confusing guidance from Federal and State entities as we permit more material sources. We support rapid enactment of policies included in IIJA like One Federal Decision that will streamline bureaucratic review and reduce infrastructure permitting timelines from 7 years to 2 years.

Buy Clean. Senators, our industry is leading the way to create more sustainable materials to reach emissions goals set by you and set by States. In 2021, 16 percent of the asphalt material in Granite mixes was recycled asphalt. In 2022, we are going to exceed 20 percent.

Ironically, we could go a lot higher if more State and local agencies would adopt best practice standards. Many States allow up to 40 percent. It is amazing how many States don't allow anywhere near that, and even local communities. There is a lot of low hanging fruit there that we need legislators, both at the State and Federal level, to help us reach.

In 2021, we replaced one and a half million gallons of petroleum diesel with renewable diesel blends, resulting in a 40 to 50 percent reduction in life cycle greenhouse gas emissions. Granite has currently developed the use of waste plastic in our asphalt mix, further reducing the use of petroleum products by another 10 percent. We applaud the provisions of the IIJA and IRA that provide incentives to encourage innovative technological advancements, and we ask that these grant opportunities come online as soon as possible. We have a list of projects that we could apply for grants that will lower energy requirements and lower greenhouse gas emissions. We are ready to make those grant applications when the agencies have the systems in place.

Flexibility. We believe it is critical for the Administration to follow the will of Congress to provide maximum flexibility to State and local partners. Whether investing in new roads in rural communities or new transit systems in urban cities, the infrastructure investments by the IIJA should benefit every American.

In conclusion, we saw your study that your actions to unanimously advance the new nomination of the new FHWA administrator. This Committee's bipartisan work is critical. We hope it continues. Sixty-nine Senators voted for the IIJA last year. Our great desire is to ensure your work is successfully implemented.

I apologize for taking too much time, and I look forward to your questions. Thank you.

[The prepared statement of Mr. Johnson follows:]

NSSGA®

NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

Testimony of Gary W. Johnson
Vice President, Land and Quarry
Granite Construction Company

On behalf of
The National Stone, Sand & Gravel Association (NSSGA)

Before the
U.S. Senate Committee on Environment and Public Works

Hearing on
"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"

Wednesday, November 30, 2022

Opening

Chairman Carper, Ranking Member Capito and members of this committee - thank you for inviting me here today to discuss the implementation of the Infrastructure Investment and Jobs Act (IIJA).

I am Gary Johnson, Vice President, Land & Quarry, with Granite Construction and Vice Chair of the National Stone, Sand & Gravel's Government Affairs Committee.

Headquartered in California and with operations located across the United States, Granite Construction is one of the largest diversified infrastructure construction and construction materials companies, as well as a full-suite provider in the transportation, water infrastructure and mineral exploration markets. Granite is publicly traded.

I am here today representing GCC as well as the National Stone Sand & Gravel Association - the voice of our nation's aggregates industry, which operates over 9,000 operations and employs over 100,000 people in high-paying jobs to source 2.6 billion tons of aggregates each year that are used to sustain our modern way of life and build our nation's communities and infrastructure.

First, I would like to echo the comments of my colleagues here today to **profoundly** thank you and your staff for crafting and executing the bipartisan infrastructure legislation. This committee's commitment to producing bipartisan surface transportation bills over the last two Congresses set the stage for moving the largest infrastructure investment in our lifetimes across the finish line.

As our country faces economic headwinds and an uncertain future, the historic infrastructure bill is laying the groundwork to keep the aggregates and materials industry moving forward to build more resilient communities and stronger transportation networks.

Many do not realize this, the products we mine and make in the aggregates industry **are the essential components** needed to build roads, airports, transit, rail, ports clean water and renewable energy networks funded through the Infrastructure Investment and Jobs Act. These products are quite literally, the building blocks of our nation.

The certainty provided by IIJA, through the five-year reauthorization of our surface transportation programs allows companies like Granite to better plan and make robust investments in our people, plants, and equipment.

The committee's hearing today and ongoing work to ensure the IIJA is effectively implemented is critical to its success and delivering the intended results of modernizing the outdated infrastructure our nation runs on.

Looking at the mandatory side of the ledger, the significant increase in highway trust fund dollars that have been obligated to the states is making a difference. While most of the funds have yet to be deployed to projects, we are seeing a significant increase in planning activity and anticipate greater lettings in the coming year. As an example, the California Department of Transportation has budgeted an increase of over $8 billion (60%) in the last two cycles over the 2020-2021 spending with $4.7 billion of the increase coming from federal funding.

I also want to praise the administration for working quickly to move discretionary funding to projects. In just one year, $185 billion in funding and nearly 7,000 specific projects, that are reaching over 4,000 communities across all 50 states, D.C. and the territories – almost all these projects will depend on a supply of aggregates resources to be executed.

However, with the enactment of any major legislation, comes implementation challenges, and I will highlight a few areas where we believe greater oversight from Congress will drive better results that allow us to build.

IIJA Implementation Recommendations

Oppose Partisan Policies That Were Not Included in IIJA

Whether investing in a new road in a rural community or a new transit system in an urban city, infrastructure investment should benefit all Americans – a mantra well-known to members of this committee.

That is why we are concerned with proposed policies that insert new, partisan criteria into the planning process, such as restrictions on new highway capacity projects or new mandates included in federal grant applications that are discouraging some communities from participating. These policies were considered and rejected by Congress and not carried in IIJA.

Limiting new transportation capacity projects and curtailing flexibility does nothing to ease congestion, reduce air emissions and improve the flow of goods, which helps address inflation. Further, roads are still an important aspect of achieving an electric vehicle future. Granite is headquartered in California, where the administration's stated goal is to move away from fossil-fueled passenger vehicles in the next decade. If this occurs, then new road capacity will not add increased emissions, but it will make the movement of goods and people cheaper and quicker. Lack of capacity has many negative impacts including increased inflation. Flexibility from Washington is critical, as states work to modernize our transportation networks, and we should not limit our ability to address increasing vehicular capacity to our systems.

It is critical for the administration to follow the will of Congress of providing maximum flexibility to state and local partners deploying infrastructure. Partisan mandates attached to federal infrastructure opportunities that discourage investment in new capacity projects, create more bureaucratic delays, or provide new workforce hurdles should be rejected.

Buy America Build America and the Aggregates Products Exclusion

One of the key policy changes made under the IIJA was the creation of new federal Build America Buy America (BABA) sourcing requirements, which include the addition of "construction materials" to Buy America preferences for federal infrastructure programs.

The aggregates, cement, concrete, and asphalt paving industry worked with this Committee and Congress, as they crafted the new statuary requirements to exclude aggregates, cement, asphalt additives and paving binders as a construction material. Further, products that are made by combining these items, like concrete and asphalt, are also excluded from the new BABA requirements and subsequent Buy America sourcing rules.

Unfortunately, one critical roadblock has been the lack of clear and conscious communication over the new Build America, Buy America regulations, including the exclusion for aggregates-based products. Multiple state departments of transportation, in addition to federal agencies, have started issuing guidance and information requests to begin complying with BABA. Each state and federal agency has issued different and often conflicting guidance. Many times, the guidance fails to recognize the aggregates materials exclusion leading to confusion across our industries.

Keep in mind that certain geographic areas of the county do not have the geologic deposits that allow local sourcing of stone, sand, and gravel to make concrete and asphalt and to be used in construction. These materials must be imported from nearby countries and often it is less costly and produces less air emissions than trucking long distances across U.S. regions. Likewise, a lack of cement capacity in the states means cement must be imported. The lack of asphalt oil production and refineries, especially on the east coast, requires agencies and contractors to import from Canada to meet demand for basic street paving materials.

The aggregates industry strongly supports the goals of Congress and the administration to expeditiously improve our outdated infrastructure. It is imperative that federal and state partners responsible for distributing federal investments follow the BABA law and subsequent Buy America requirements, as written by Congress, and not impose any sourcing requirements or paperwork burdens on concrete, asphalt, cement, cementitious material, aggregates, additives, and binder. This will ensure maximum project delivery and American job creation.

Permitting Reform Is Needed to Build

The White House Council on Environmental Quality (CEQ) earlier this year issued a new regulation that complicates the permitting process for large infrastructure projects under the National Environmental Permitting Act (NEPA). This bureaucratic action broadens definitions and adds duplicative federal agency reviews that will do nothing to improve environmental outcomes. What is more frustrating is that these new rules run counter to the bipartisan NEPA reforms that were included in the Infrastructure Investment and Jobs Act (IIJA) which was signed into law last November.

Aggregates suppliers across the country crave certainty, as we work to supply the billions of tons of essential materials needed to improve roads; upgrade bridges; advance transportation systems and ports; and advance our modern energy infrastructure that will be funded by the investments provided by the bipartisan IIJA. This is especially important in the current economic environment, where needless red tape will delay project implementation and drive-up costs of construction materials.

The fixed cost investments for aggregates reserves, plants and rolling stock to produce this material runs from $3 to $4 per ton of material produced, which requires tremendous replacement capital each year from companies like Granite. This requires a huge commitment of capital which can be exacerbated by the high inflation we now experience. America uses over 2.6 billion tons of aggregate a year. This means an annual commitment by private companies of up to $10 billion per year for new reserves, plants, and equipment to keep producing the materials needed to meet the demand.

Instead of proceeding with new rulemakings that complicate the National Environmental Policy Act (NEPA) procedure, we urge rapid enactment of policies included in IIJA like "one federal decision" that will streamline bureaucratic review and reduce infrastructure permitting timelines from seven years to two.

NEPA is just one part of the permitting problem. Aggregate producers must often wait years for federal agencies such as the Army Corps of Engineers and the US Fish & Wildlife Service, amongst others to issue decisions. Often, the federal regulations conflict with similar state regulations adding complexity and red tape in the permitting process. Our operations need clear rules and accountable federal agencies to produce materials to meet the goals of the IIJA.

Additional Policy Recommendations

Industry is Leading the Way on Buy Clean

Industry has been leading the way to create more sustainable building materials that help us reach our emission reductions goals. Granite, like many across the construction materials industry, is focused on delivering more sustainable building materials and reducing GHG emissions. As implementation of the IIJA, Inflation Reduction Act (IRA) and work on Buy Clean policies continue, we urge policymakers to continue working closely with industry to identify investments that will help achieve the emissions reduction goals. We urge policymakers to prioritize funding to companies to support adaptation to lower carbon technologies. This will ensure rapid integration and recognition of low emission materials to build a more sustainable future.

For decades, the construction materials industry has been working to reduce air emissions in our materials production and construction operations. To better understand the impacts of the materials we produce, the industry has developed thousands of Environmental Product Declarations (EPDs). At Granite, we have published 8 EPDs for asphalt mixes and are in the process of creating 6 aggregate EPDs. In terms of innovation, Granite recently developed and is refining a process to replace some of the liquid oil binder with up to 10% recycled plastic in the production of our asphalt paving mix , which lowers the embodied carbon in the mix. Other materials companies are doing many of these same things to reduce emissions and produce more sustainable outcomes.

Over the past decade, Granite has invested substantially in energy conservation and emissions reduction in our operations. Key examples include: use of solar power, insulation of oil tanks and delivery systems, using lower emissions asphalt production processes, using more recycled asphalt, using hybrid construction vehicles, and using alternative fuels. In 2021, Granite replaced almost 1.5 million gallons of petroleum diesel with renewable diesel blends, resulting in 40-50% fewer life cycle GHG emissions compared to petroleum diesel.[1]

[1] California Air Resources Board, LCFS Pathway Certified Carbon Intensities, https://ww2.arb.ca.gov/resources/documents/lcfs-pathway-certified-carbon-intensities.

We appreciate the work of this committee during consideration of the IRA to recognize the industry-led approach and provide incentives to help promote the use of cleaner materials we are actively making.

As implementation of IRA and work on Buy Clean policies continue, we urge policymakers to continue working closely with industry and recognize the work that has already been done. This will ensure rapid integration and recognition of low emission materials to build a more sustainable future.

Reject the new Waters of the United States (WOTUS) rulemaking until the Supreme Court rules in the Sackett vs. EPA case.

It is anticipated that the Supreme Court could change how the EPA and Army Corps of Engineers define a Waters of the United States (WOTUS). On October 3, the Supreme Court heard oral arguments examining the Sackett vs. EPA case and questioned the significant nexus analysis.

All the while, EPA and the Army Corps are working on finalizing a new rule, which makes ***substantive*** and ***new*** changes to the definition of WOTUS, under the guise of withdrawing the 2020 Navigable Waters Protection Rule. In fact, in February, the Small Business Administration found that the agencies have improperly certified the proposed rule, determined the proposed rule expands the definition of WOTUS and impacts small businesses requiring a small business regulatory review.

If the agencies proceed with their flawed rulemaking, material producers will be forced to comply with multiple complex changes, resulting in the fifth change in a decade. Because of the uncertainty, aggregates producers are unsure of when and how new operations and expansions can be permitted. Having EPA finalize yet another rule as SCOTUS stands poised to alter the rule's underpinning only adds to an already time consuming and uncertain permitting process. The current regulatory ambiguity is impacting industry ability to obtain CWA permits to establish new domestic manufacturing facilities and build infrastructure projects that are critical to addressing our supply chain crisis.

Unfortunately, despite hearing from impacted stakeholders, 201 Members of the House and 50 U.S. Senators, the agencies are still proceeding with a final rule that is likely to conflict with the Supreme Court action. To provide our industry with certainty needed to produce construction materials that supply the projects funded under IIJA, it is critical for the administration to halt this doomed rulemaking process and await the SCOTUS decision before proceeding with a new rulemaking process.

Rail Reform and Avoid a Pending Strike

It is no secret that rail service conditions are failing for the aggregates industry. Deteriorating rail conditions have a direct impact on our ability to supply millions of tons of aggregates and industrial sand, which are used to improve outdated infrastructure, build resilient communities, and drive America's energy production.

According to the California Air Resources Board, using renewable diesel provides a 40-50% reduction of GHG from well-to-wheel emissions and reduces tail-pipe emissions compared to petroleum diesel.

In detailed comments to the Surface Transportation Board (STB) earlier this year, NSSGA shared how service disruptions and unwarranted price increases are severely impacting our industry. If action is not taken to improve service, the constant delays, and the inability to move product to market will continue to have a direct impact on supplying key infrastructure projects across the country. This will ultimately plague the implementation of the bipartisan Infrastructure Investment and Jobs Act.

NSSGA calls on Congress and the Surface Transportation Board to enact meaningful rail reform that levels the playing field between shippers and carriers. One such proposal is the pending rulemaking at STB related to reciprocal switching. If enacted, this would drive greater competition, especially for facilities captive to one carrier.

Further, a pending rail strike is creating even more uncertainty. If a strike proceeds, the millions of tons of aggregates and industrial sand that move from quarries and plants to construction sites and markets will halt. This will have a profound impact on construction projects and infrastructure projects across the nation. Should Congress be faced with a looming strike, we urge swift action to resolve the strike and remove the economic catastrophe facing the American people and construction industry.

Conclusion

Chairman Carper, Ranking Member Capito and the distinguished members of committee, thank you again for the opportunity to testify before you today to provide a progress update on the implementation of the IIJA.

We have just celebrated the one-year anniversary of the IIJA and earlier this year Granite Construction celebrated our 100-year anniversary. There have been a lot of changes in the last 100-years and using the ingenuity of our work force, and with appropriate federal funding and environmental guidelines, we can and will rebuild our infrastructure to get America back to a leadership position in how we move people and goods.

We thank you for your bipartisan efforts to strengthen America's infrastructure and look forward to working with you to achieve our shared goals.

Senate Committee on Environment and Public Works
Hearing Entitled, *"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"*
November 30, 2022
Questions for the Record for Gary W. Johnson

Senator Inhofe:

1. Public-private partnerships (P3s) are a key tool for agencies to achieve cost-efficiency and manage risk while leveraging private sector capital, expertise, and innovation. The Infrastructure Investment and Jobs Act (IIJA) encourages consideration of P3s, for example by requiring value-for-money analyses for large Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing projects. One year into IIJA implementation, are many states and local governments seriously considering P3s to deliver projects with IIJA funding?

   Response:
   At this time Granite and the broader industry are not seeing an increase use of public-private partnerships (P3s) projects. . We are aware that Florida DOT has indicated that IIJA funds will be used for the Next program in Tampa which rebuilds two major interchanges and adds express lands to I-276. It is unclear what funding buckets and project delivery method will be applied these projects or which fiscal years the IIJA funding will be used.

   If not, what roadblocks are preventing them?

   Response: **In general the construction industry faces great uncertainty when looking to plan and build large infrastructure projects that would be funded by P3s. Risks to contractors are increased when projects utilize design build contract language, and P3's due to the attempted transfer of contract risk to the contractors. There are economic risks, especially with growing inflationary volatility that has a driven the cost of construction materials. Unpredictable and increasing fuel costs is a significant issue in preparing firm bids and cost estimates. Further, inflation is driving up interest rates, slowing all projects financed with debt. Finally, policy uncertainty from Washington is also impacting larger P3 projects. Most P3s are designed to add capacity to reduce congestion. The administration has discouraged these projects and promised greater regulatory scrutiny.**

a. For what types of projects do you think there is the strongest potential for P3s? <u>**Response**</u>: **Projects that can be supported by tolls, user fees, or a farebox collection to offset capital, operation and maintenance costs have the greatest chance of success. Projects that have significant private enterprise participation such as airports could be well suited for P3 work. Fair allocation of revenue risk between owner, designer, concessionaire and contractors is a key issue in project delivery.**

2. In an effort to expedite project permitting, the IIJA permanently authorized the Federal Permitting Improvement Steering Council, which is tasked with coordinating project reviews among federal agencies. How would you assess the effectiveness of the Permitting Council? <u>**Response**</u>: **The aggregates industry supports the establishment of the Federal Permitting Improvement Steering Council (FPIC). Better coordinating project reviews among federal agencies is critical to expediting permitting decisions and reducing red tape.**

   a. Has its involvement in projects helped to address concerns about permitting delays? <u>**Response**</u>: **Projects that have been included on the permitting dashboard, should receive greater transparency as stakeholders can access direct information online about permitting decisions. This should help with accelerating permitting decisions for these specific projects. We look forward to continuing to work with Congress to bring more transparency to all permitting decision.**

3. Inflation, supply chain disruptions, and a tight labor market are continuing to present challenges to state and local agencies and their partners in delivering infrastructure projects. How have these challenges affected your work? <u>**Response**</u>: **Yes, it has affected our work, and it has affected the ability of state DOT's to contract and build work within project estimates. As I testified last month the cost of cement has increased an average of 30 to 40% of the last 2.5 years. The cost of liquid asphalt has increased 76% over a two-year period. Consequently, contractors must make critical assumptions on the cost escalators for large jobs that take years to build as these cost increases on an annualized basis are much higher than typical bid margins. Fuel costs are another volatile input that must be estimated on bid day but change drastically over the course of the contract.**

   Another issue that impacts cost of construction materials is the availability of cement and liquid asphalt supply. Since 2005, the net production of U.S. crude has dropped by 32%[1]. The number of oil refineries in the U.S. has dropped from 301 in 1982 to 130 in 2022, and only 40% of those are active in liquid asphalt production, which is critical to producing asphalt paving materials.

   On the cement side, the imports have steadily increased since 2011 and are currently at 22%[2] . The percent of imported cement is as high as it has been since 2006. Over

[1] U.S. Energy Information Administration
[2] Portland Cement Association/ USGS

the last twenty years, twenty-five (25) cement plants have closed pushing the need for importing the more of the basic ingredient of concrete.

The upward trend in the reliance upon imported construction materials reinforces the importance of the key provisions in the Buy America Build America legislation that exempt key construction materials used in transportation construction funded by IIJA – aggregate, cement and liquid asphalt.

a. What suggestions do you have for addressing them? **Response: There should be more flexibility in contracts that addresses inflationary pressure faced by contractors and material suppliers by allowing index adjustments to made for construction jobs. Further, we call on Congress to support polices that will address the ongoing energy crisis and reduce permitting delays which have a direct impact on the cost uncertainty faced by industry,**

Senator Cramer

1. The Infrastructure Investment and Jobs Act (IIJA) codified the One Federal Decision policy, which streamlines and expedites the environmental review process for infrastructure projects. While that was a good first step, permitting and environmental review still take too long and this administration has taken little to no action to utilize the permitting efficiencies Congress granted them. Further, the Federal Highway Administration recently released data showing a 20 percent increase in construction cost for roads and bridges from 2021 to 2022.

   a. While inflation is a key driver of these increased costs, do you believe that environmental review and permitting process delays also contribute to ballooning price tags? **Response: Yes, in two ways. Additional environmental review, especially if the state and federal efforts are duplicative, add direct costs, and may not add a commensurate level of value to the project being constructed. Just as important is the time required for any environmental and permitting process delays because in times of high inflation the actual cost of some construction items such as materials could increase by annualized amounts of up to 20% or more.**

Senator CARPER. You owe us 30 seconds.

[Laughter.]

Senator CARPER. We thank you very much for those words, Mr. Johnson.

In baseball, there is a saying, telegraphing, a pitcher telegraphic his pitch. I am going to telegraph my pitch. When we get to the end of this hearing, I am going ask each of you to take maybe 30 seconds or so and tell us where you think you agree, where there is common ground between the five of you. Be thinking about that. It is one thing to talk about where we disagree, but I am looking for common ground. We will do that at the end of the hearing.

We shouldn't be surprised to hear that there are a number of things that need to be fixed, tweaked, or whatever. Anything this massive, this transformational, involving State, local, cities, counties, Federal Government, private sector, and you name it, it is hard to imagine that we would have gotten it perfect. We need to keep working at it.

As I left the office to come over here, Senator Capito, my staff in the front office had CNN or something on the television. They were announcing Tom Petty, who died a couple of years ago, Tom Petty is releasing a new live album. I thought, that is interesting. They were playing the words of his song, Stand My Ground, I Won't Back Down. We are not going to back down until we get this right, perfect, as close to perfect as possible. So we appreciate your help in getting us there.

Mr. Stanberry, in your first call for applications the EPA received requests for nearly $4 billion in funding from the Clean School Bus Program, with applications from every State in the Nation and a majority of districts, from districts that serve some of our neediest students and children. It is not surprising that school districts all over the country want the benefits of electric school buses. Taking old, dirty diesel school buses off the road reduces deadly air pollution that contributes to childhood asthma, while contributing to a warming climate.

Question: In Highlands' experience, what are some ways public agencies and school districts benefit by switching to electric bus fleets beyond the emission reductions and public benefits? For example, are there lower operation and maintenance costs associated with electric buses, compared to diesel?

Mr. STANBERRY. Chairman, thank you for the question. Electric school buses are one of the really interesting spaces in the public policy arena, because they provide so many different types of benefits to the communities that they serve. If you look to your first, to your suggestion, yes, indeed, there are savings from both fueling and maintenance. So there are about 3 percent of the moving parts on an electric school bus as there are on a traditional diesel school bus. That translates directly to maintenance savings.

On the fuel side, there is both lower cost, electricity is lower cost than diesel, and it is less volatile in its pricing. We have seen a lot of that as we have seen inflationary actions given the war in Ukraine and other factors on diesel that have created some substantial price hikes recently.

But there are a number of other benefits for the communities as well, some expected, some unexpected. Just to take one example, it creates a better working environment for bus drivers. As many of you probably know from your States, there is a nationwide shortage of bus drivers today that has come from the effects of the pandemic.

What we have seen is that actually school districts are using new electric buses as a way to recruit new drivers. Because the ambient noise level in an electric school bus is so much lower than in traditional school buses, it makes for a safer environment for the bus driver. They can hear the kids, the kids can hear each other, and naturally, child volume drops, and the bus driver has an easier time hearing what is happening outside the bus.

There are a range of others. I won't go into all of them. But you see a wide range of benefits.

Senator CARPER. Thank you.

Real quickly, I want to follow up then I will yield to Senator Capito.

What are one or two changes, just very briefly, that could be made by EPA or Congress that could help low income and disadvantaged schools better participate in the Clean School Bus Program?

Mr. STANBERRY. Good question. I think there are some rule changes that can be made around, in particular, scrappage requirements. The agency has initiated some additional flexibility to its traditional approach to one for one scrappage requirements that have helped some. But they are not a full fix. We know that there are school districts today that did not apply in the first round because they do not feel they have the ability to meet the current scrappage requirements.

And I would note that in a bill that is transformational and a program that is designed to help with the market transition, it is difficult to have one for one replacement requirements, because it creates transactional cost with each individual action by a school district. And there are risks associated with it, perceived and real, for transportation directors that causes concern.

So continuing to add flexibility on scrappage requirements would help a lot more school districts.

Senator CARPER. Great. Thank you for that.

Next in line for question is Senator Capito. Senator Cardin has joined us, Senator Inhofe, Senator Cramer, and Senator Boozman.

Senator Capito.

Senator CAPITO. Thank you. Thank all of you.

We have heard already, you have partly addressed my first question, what is working, what isn't working. I would like to drill down more on the not working portion of it, because obviously the Buy America issue is a big issue.

I want to talk to you, Mr. Bauer, about the One Federal Decision. Because I think in the long run, this is going to be the biggest issue. We received from the Department of Transportation responses to questions we were asking on implementation. It appears as though the Administration is really slowing making these provisions for One Federal Decision.

What would you suggest to improve that? Do you feel like the communication is good? Do you feel like the department is in on this and wanting to do it? Where are we on this? We are looking at trying to move that concept to other different permitting types of activities. And if it is not working at DOT, it is not going to work anywhere else.

Mr. BAUER. Yes, that is a big question. Let's start with understanding that the environmental review process for highway and bridge projects typically takes 5 to 7 years right now. One Federal Decision lowered that goal to 2 years. I think we are all waiting to see how the Administration is going to meet that goal of moving from 5 to 7 to 2.

But some of the key things that are part of this discussion is assuring that the department has the ability to compel other involved Federal agencies to perform their part of the review.

Senator CAPITO. Is that happening now?

Mr. BAUER. Not that we have seen. And remember, we are still very early on in the first year of the Infrastructure Law. States obligated their funds, and a good portion of them have moved to the construction phase. But that is still going to take time.

Senator CAPITO. They probably had things in the pipeline that were already ready to go.

Mr. BAUER. Right.

Senator CAPITO. So the other agencies, that is a problem?

Mr. BAUER. Yes.

Senator CAPITO. Other issues with One Federal Decision?

Mr. BAUER. There are page limit requirements as part of One Federal Decision also, which I don't think is as difficult. Back to trying to make the process as efficient as possible, one of the key goals there is assuring that overlapping reviews, whether it is through the environmental process or the planning process, are consolidated and performed in conjunction, as opposed to one after another.

In general, I think the guidance about how to get from the status quo of 5 to 7 years to 2 years, I think we all agree with the goal. The challenge is, how do you do that?

Senator CAPITO. Has the department, we are a year into this. It has a finite life. Those decisions still haven't been made?

Mr. BAUER. My recollection of when the Secretary was here earlier this year, he talked about how they were utilizing the process to focus on categorical exclusions. That is great, but it is the environmental impact statements and the environmental assessments that are more time intensive and deserve a lot of focus also. That whole thing about how you shave off the years is not just going to happen.

Remember, one of the things that is part of the law is that there is a report due next year about the efficacy of One Federal Decision. If we don't have some clarity about how that is actually going to achieve the goal of shaving years, that is going to be a pretty weak report.

Senator CAPITO. Right.

Mr. Johnson, do you have any comment on that from your perspective, on the One Federal Decision?

Mr. JOHNSON. Well, it is disappointing that additional, earlier this year the Administration added some additional, the phase two rule.

Senator CAPITO. Under NEPA?

Mr. JOHNSON. Under NEPA. It is difficult at times to get State agencies and Federal agencies to work together when we are permitting projects or even facilities like quarries. In California, a lot of times the State regulations are even more stringent than the Federal regulations.

But if there is any inconsistency between the two sets of regulations, it makes it very difficult to get the agencies to come together and agree upon a certain mitigation measure in a timely manner.

Senator CAPITO. Ms. Mills, you are right there on the ground trying to figure out how to write your bids to match these sorts of things. I know the Buy America, and we will get into that later, but are you seeing the One Federal Decision in any form or fashion moving from your planning to your actual able to bid and get projects moving faster?

Ms. MILLS. Coming from a State like Pennsylvania which is known for having a lot of structurally deficient bridges——

Senator CAPITO. I get it. I am from West Virginia. We have them, too.

Ms. MILLS. I am from Pittsburgh, so we just had the Fern Hollow Bridge collapse. There was a rush to get that project back on the ground. So any further permitting and time delays is hard on us in Pennsylvania to correct our problem.

Senator CAPITO. Thank you.

Senator CARPER. Thank you.

Before we turn to Senator Cardin, several members of our Committee are veterans, former military. Senator Ernst was in the Army; I think she is a retired Lieutenant Colonel or Colonel. Senator Sullivan is a Colonel in the Marine Corps. I am a retired Navy Captain.

In the Navy, we have a lot of sayings. One of them that I have always turned to in a situation like this where we are talking about trying to take a huge piece of legislation, monumental piece of legislation with so many moving parts, and actually implement it in a cost effective and timely way, it is really hard, it is a little bit like turning an aircraft carrier.

But if we stick with it, don't give up, work together, we can turn aircraft carriers, and we can get this piece of legislation not just passed and enacted, but implemented well. That is what are committed to doing. Thank you.

With that, let me turn to my neighbor, my DelMarVa buddy, Ben Cardin.

Senator CARDIN. Captain Carper, first of all let me thank you for your leadership. We do share a lot. We have, of course, the C&D Canal. Do we need to widen it so we can get an aircraft carrier to turn around?

[Laughter.]

Senator CARDIN. We will see what the next WRDA bill looks like.

Let me thank all of our witnesses for being here. We are very proud of the Bipartisan Infrastructure Bill. It is to modernize infrastructure in America. We have seen as we travel internationally that America was behind where it needed to be. And the principal objective was to modernize our infrastructure. We see now those seeds that we planted are starting to take hold, as we see local governments, State governments, moving forward on a lot of infrastructure projects that were delayed for a while.

It is very interesting, Mr. Chairman, I was in, as you know, in Sharm el-Sheikh on the COP27. I want you to know, we got complaints from our traditional allies. They think we are moving too quickly, and they won't be able to compete with us. That is good news for us, but bad news for our competition.

One of the major objectives in this panel here today really underscores it, it is to help our economy and create jobs. And as I see, looking at the people at this table, you are doing exactly that in the ability to use the resources under the Bipartisan Infrastructure Bill to move forward on some very important projects.

Mr. Levy, I will start with you first. It is my understanding that you have about 62 fast charging stations in Maryland across about 33 locations. Thank you for the work you are doing in the State of Maryland.

I am very interested as to how these charging stations will keep up with technology and production changes. We see the electrification of our transportation fleets. And it is not just limited to our passenger vehicles; it is also in regard to light trucks and heavy trucks.

As you see this unfolding, how will these infrastructure charging stations be available for all forms of electric vehicles, including heavy trucks?

Mr. LEVY. Thank you, Senator, for that question. While it is not the subject of this hearing, thank you also for your leadership on the IRA and the 30(c) and 30(d) and other tax credits. As I mentioned in my testimony, we see great complementarity between the investments in the Bipartisan Infrastructure Bill and IRA as being critical to advancing the sector. Thank you for your leadership on that.

With regard to technology and where the market is moving, one of the issues is that consumers don't yet realize that their car can ultimately control the maximum rate of charge. So while we continue to deploy faster and faster chargers, including 350 kilowatt power sharing technology, around Maryland and elsewhere, many cars can't take north of 54 kilowatts in the case of the Bolts, 150 kilowatts in the case of the Mach-E, 270 kilowatts in the case of my car. We do see those advancements. So it is important to be as economically efficient as possible while building some modularity and flexibility.

EVgo has been focusing on deploying power sharing technologies that we can take advantage of the most economically efficient way to deliver what customers need and some dynamic power sharing, so that can adjust over the course of charging curves. The good news is that as the industry has migrated toward consolidation on the CCS standard, we can use the same connector and those technology configurations for a number of different deployments, including some truck deployments.

In fact, we have an announcement we made recently with MHX, which is doing Class A truck electrification, and we are working with them to deploy 350 kilowatt chargers just like the ones we have been rolling out in partnership with MEA in Maryland and elsewhere, so that we can use that same technology.

The industry is also moving to faster and faster technology, 500 kilowatts north of 1 megawatt, and the industry has come together through technical groups like CharIN to make sure we are not repeating some of the past mistakes and still having one connector standard, or at least a compatible standard, so that we don't have to worry about multiple competing connectors as it relates to different types of vehicles.

Senator CARDIN. Thank you. That is a pretty thorough answer.

Mr. Stanberry, I understand your largest client is Montgomery County in school buses. That is good to hear. Montgomery County has been very aggressive on the electrification of their school buses and their fleets. I really want to underscore the point the Chairman made, and that is, how do we reach communities that have traditionally been underserved? There is now financial opportunities here. You talked about one aspect of that in regard to the disposal of the older buses.

I am also concerned about outreach. Do they really understand how to get engaged in this program, and is there more that we can do to make sure underserved communities are aware of the opportunities they have in regard to electrification of their school buses?

Mr. STANBERRY. Senator Cardin, thank you for that question. Without a doubt, there is more we can do on outreach. When you look at the communities that have been historically underserved, they face a number of challenges in the adoption of electric school buses that are unique to their circumstances. Obviously, each case is different.

But in general, it is not just that they have less resources. It is that they have less personnel. So that means less folks to do the same amount of work that everybody else has to do, less folks to dive into the details of learning a new technology, implementing a new technology, understanding the Federal programs, to your point.

So there is significant additional outreach that is needed for those communities. I would say in the first round of the program, EPA did start to take some of those steps to get more information into the hands of those communities. That was a good start, but more is needed over time.

I would also say that it is important that the agency start to look at providing differential resources between different kinds of communities. The folks in traditionally under resourced communities need additional support beyond what other communities need. The agency did take a start in that, but needs to refine the approach going forward.

Setting aside a specific budgetary allotment for those communities is one thing that they can do that would really help. And then providing a structure that allows for those communities to apply for those funds separately from the communities applying for other funds, so that the folks that have less personnel are not competing with those who have more at the same time for the same funds.

Senator CARDIN. Good suggestions. Thank you.

Thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator Cardin, for joining us today and for your great work on this bill. You played a huge role, and we are mindful of that and grateful for that.

Senator Inhofe, you are recognized.

Senator INHOFE. Thank you, Mr. Chairman.

I want to thank Mr. Johnson for his comments. It has been a mission of love all these years. I appreciate that very much.

Ms. Mills, we have something we are faced with right now, and this level of inflation creates other problems. Over the last year, how has your company managed the work force and supply chain challenges in the face of what I call the multi-decade high inflation environment that we are in?

Ms. MILLS. As I spoke before, we are actually one of the biggest highway edge drain installers on the East Coast. What we do is put in plastic pipe, and we all know what happened with plastic pipe in the past year. I can tell you we install about a million and a half feet a year across the East Coast. Our pipe pricing went up 80 percent since last year.

So something that used to be below a dollar is now close to $2. A contractor of my size cannot absorb a million dollar loss continually with all these issues.

Senator INHOFE. As easily, perhaps, as some of the larger companies are able to do.

Would you also specifically talk about, as you know, Oklahoma is a rural State, and the unique problems that you are facing right now in our States, like Oklahoma?

Ms. MILLS. In Pennsylvania, where our company is located, we are also pretty rural. We are outside of Pittsburgh. We are having trouble getting people to drive to job sites because of the cost of fuel. Some of our projects are an hour away. Our employees are picking more urban areas to go to work, or either other jobs outside of the construction industry, because they can't afford to drive that hour and pay for gas.

Senator INHOFE. Hadn't thought about that.

Mr. Bauer, would you speak to the challenges of completing these projects, the timely completion of surface transportation? What unique problems are you facing?

Mr. BAUER. We talked a moment ago about One Federal Decision and how that has the potential to very much assist the situation. But we also can't overlook the challenges that occur from lack of regulatory clarity on a lot of other issues. Case in point, you all have been aware for the last several Administrations that the issue related to wetlands, and specifically Waters of the U.S., has bounced back and forth from Administration to Administration. The Obama administration had a proposal, the Trump administration repealed it, they came up with their own, and the Biden administration has repealed that.

All along, our community is trying to advance projects with this changing set of rules in the middle of the game. That makes it very difficult. And wetlands are certainly a significant component of infrastructure projects. And Waters of the U.S. isn't the only situation where that occurs, but I think it is a very well understood one to help make the point here.

Senator INHOFE. Yes, I think it has. From our perspective, and you have been dealing with this for a long period of time, those of us who are sitting up here on this side of the table, what would be looking at that needs more attention today than it has in the past, dealing mostly with the fact that, you bring it up, that these are problems? Different Administrations come in, and they change because those people who are serving don't always know how difficult it is to change once you get a path going.

Mr. BAUER. I certainly recognize the challenge of passing legislation. But the ongoing oversight that you have started performing I think is essential to assuring that, as has been said repeatedly, that the law is implemented as it was intended is critically important. At the same time, we can't overlook the need to deliver the Federal funds in a timely manner.

The first year of the Bipartisan Infrastructure Law's round of investment came 6 months into fiscal year 2022. States obviously were able to commit those funds, but a 6 month late start doesn't help. So earlier in the process, in the construction season that funds are provided through the annual appropriations process is another area besides regulatory certainty and oversight that can be very helpful.

Senator INHOFE. OK. Thank you very much.

Thank you, Mr. Chairman.

Senator CARPER. Thank you very much, Senator Inhofe.

We are joined by Senator Kelly. He will be followed by Senator Cramer.

Senator Kelly.

Senator KELLY. Thank you, Mr. Chairman, and thank you, everybody, for being here today.

Mr. Johnson, the first question is for you. I want to start off by talking about a bill that I included in the Infrastructure Law; it's called the ROCKS Act. It establishes a working group to make recommendations for how to better manage sources of aggregate materials like sandstone and gravel, and consider a project's proximity to sources of these materials during the planning process.

This bill was modeled off of policies adopted by Arizona over the past decade to ensure that local sourcing of aggregates is considered when planning transportation projects. And I am hopeful that our bipartisan bill will enable these best practices to be shared nationwide.

Mr. Johnson, can you share more about how better management of aggregates can help to lower costs and alleviate supply chain concerns for transportation projects? And how did you believe this working group can help ensure State and local transportation planners consider local supplies of aggregates when developing transportation projects?

Mr. JOHNSON. Sure, Senator. First, thank you for working with Senator Portman on the ROCKS Act. It was a bipartisan effort.

You go back to Arizona, which is the roots of where this idea came about, and making sure communities protect access to important geological resources, not every rock in the ground can be used to make concrete or asphalt, and identifying the appropriate geologic areas and working with the communities, the cities and the counties, to protect that, so mining companies or construction material companies have access to it is important.

One of the things that can drive up the cost of a project significantly is having to import or ship aggregate long distances. Aggregate is a very dense, heavy material that is very low cost. And with the price of fuel and trucking costs and labor shortages, moving it long distances can drastically increase the cost.

If you look at the average cost of rock, sand, and gravel in Arizona, it is two or three times less than neighboring States'. A lot of that is due to local government and State government stepping in and saying, hey, we need to protect these areas. Hopefully, the DOT and FHWA working together, their working group, will come up with similar Federal regulations that can be used to help other States do the same thing. We thank you for your efforts.

Senator KELLY. Thank you.

Mr. Johnson, also Mr. Levy, you both mentioned that the Build America Buy America requirements that were included for all programs within the Bipartisan Infrastructure Law. While your industries are very different, you both raised similar concerns about the way the guidance for these requirements have been rolled out and the uncertain timelines for when these requirements should kick in.

Why don't we start with Mr. Levy. Can you expand on your testimony and provide specific steps that you would like to see the Administration take to clarify how your industries can comply with the Build America Buy America requirements?

Mr. LEVY. Yes, thank you for the question, Senator. EVgo is not a manufacturer of chargers. We are a technology specifier that works with a number of different suppliers. As a result, we have a pretty good view of where the industry is from different sources.

While the level two charging infrastructure manufacturing base is a bit more advanced in the U.S., including in Senator Cardin's home State, the DC fast charging side, especially higher power, is almost starting from scratch. There are a couple of things that have started, and people have announced some charging manufacturing in DCFC. But that supply at scale is not available yet.

Additionally, because even if somebody were to take an offshore manufacturing facility, copy and paste it to the U.S., it still needs to go back through UL certification. And then following UL certification, individual charging networks put those chargers through the paces. EVgo has an innovation lab in El Segunda where we test all these things.

So I share that background because the Buy America waiver that is set to expire at the end of this year before NEVI funds have been awarded means that there in effect is not a waiver for any future projects when the supply is not there yet for 2023.

Our specific recommendation as we have submitted to FHWA in public comments is to have a waiver at least through the end of 2023, and then take a data oriented approach to looking at where is the state of the industry, what has passed UL certification from U.S. sources, is it available at scale. Because today we are seeing very long lead times from existing overseas manufacturing capacity. So we know it will take time to ramp, especially with an increase in demand as spurred by BIL.

Senator KELLY. I am out of time. Thank you to all of you for being here.

Senator CARPER. On a personal note, there was a TV special I think on CNN maybe Sunday night that I think featured a member of your family, and you. We are honored to be in your presence. Tell Gabby we said hello, and you go, girl.

Senator KELLY. I will. Thank you.

Senator CARPER. Thanks so much.

Senator Cramer, you came early, and you stayed late. We are grateful for your patience. Thank you. You are now recognized.

Senator CRAMER. It is important stuff. I like to satisfy my curiosity by listening to the answers of the witnesses to other people's questions. Come to find out, they are often the same questions I have. So it works pretty well.

I am going to make some observations, first of all, on some of the things that were said, and then maybe drill down a little deeper or get further clarification.

Mr. Bauer, you said something interesting in your opening statement that I think is worth repeating. I will repeat them in my words, and you can correct me if I am wrong.

You referenced how important this 5 year new bill was compared to the alternative, which would have been a 1 year flat lined extension of status quo. Particularly in this inflationary time, I think it is an important point, because really that would have exacerbated inflation. I think we don't talk enough about the anti-inflationary impacts of infrastructure. Because everyone talks about the supply side of the economy, and they talk about the demand side of the economy. But they talk about it in the context of the Federal Reserve. They talk about it in the context of money, the supply of money, to shrink the demand for the products.

Of course, one of the ways to do that is add to the cost of money, right? So it is all anti what you are doing, it actually enhances the cost of things. I am not saying the Federal Reserve shouldn't do that. I am on the Banking Committee, and I am glad they are doing that. I wish they would have started it sooner and been more modest about it instead of so dramatic.

That said, I think you raised a point that we should talk more about, and that is that infrastructure is anti-inflationary, particularly when the real challenge we have is while the demand grew because there was a bunch of free money thrown out into the marketplace, the supply chain got broken. You guys fix supply chains. You move commerce. It is so important.

So thank you, first of all, for reminding us of that. I wouldn't mind a little more detail, if anybody has it, and I want to comment on some things that have been said specific to how big the bill is and how hard it has been to turn the ship. We were rather prescriptive, I think, in the legislation, with the One Federal Decision. That was a prescription to the complications. It was designed to simplify the environmental process, not to further complicate it.

So I am not looking at you all as part of the blame. I am saying the Administration, in many cases, in implementing this law, they have tried to add complication by considering things that we specifically excluded. That is what Memorandum 16 was all about, adding the Administration's priorities into the guidance and whatever other things they can add it to.

So I guess in this inflationary time, when you are trying to fix inflation by fixing the supply chain, maybe you could talk just a little bit about the cost of that. You are already dealing with inflation. You are dealing with the higher cost of borrowing money, buying equipment as well as materials, labor certainly is a stress point.

How about the cost of complicating the regulatory side of it? What can we do better?

Mr. Johnson, go ahead. By the way, the Gary Johnson who was the Governor of New Mexico is from Minot, North Dakota. He ran for President as a Libertarian, you might recall. He was a Republican Governor who ran for President.

Anyway, we know you are not him.

[Laughter.]

Mr. JOHNSON. Sure. Inflation has driven the cost up of construction drastically. I checked with a large concrete supplier in Southern California yesterday. In the last 2 and a half years, the price of cement, which is the primary or the most important ingredient going into concrete, has gone up 30 to 40 percent in 2 and a half years. Liquid asphalt, which is a binder that we use to make the asphalt that we pave the roads with, in the last 2 years has gone up 76 percent.

So if we squelch the supply of cement and asphalt oil, it is going to continue to drive it up, drive the price up. On the permitting side, the longer it takes to permit something, the longer, the more regulations you have to go through, the longer the process, that obviously drives the price up.

I was at a conference in Dallas a couple of weeks ago, U.S. Army Corps of Engineers Regional Director said they have projects that they are putting out to bid, a lot of Department of Defense contracts, that are not being bid upon because they don't have the ability to give the contractors adjustments on material pricing on long jobs. So contractors, like Granite here, were saying, we can't do that. It's too much risk.

So we have to get inflation down. The only way I know to do that is to increase supply, increase the ability of people to get things done quickly and easily.

Senator CRAMER. Do I get to cheat just a little bit?

Senator CARPER. Just a little bit.

Senator CRAMER. Any of the other witnesses who want to add onto that.

Mr. Bauer, you brought it up originally.

Mr. BAUER. Mr. Johnson had a great answer. The theme of your question is the time value of money.

Senator CRAMER. The time value of money.

Mr. BAUER. The longer things take, the more they are going to cost. You are right, that doesn't get considered enough. It is very hard to create policy to capture the time value of money. But what they have described as to what their businesses have experienced in the last couple of years just puts a blast rocket on the typical time value of money calculations. Everything costs more. I wish I would have said this when Senator Capito was asking me previously about One Federal Decision. Again, it is hard to legislate this.

But the fact remains that without a commitment on the part of the Federal agencies, State agencies, to try to do this, your policies are always going to miss the mark. There has to be a commitment on the part of certainly our industry, but project owners and administrators too that we want to try to capture value and get projects out as soon as possible.

Again, you have a lot more skill than I do in this area. And if you know how to legislate it, great. That commitment is a huge component of success, no matter what we are talking about.

Senator CRAMER. You are right on point. It is my greatest frustration of this place.

Thank you.

Thank you, Mr. Chairman.

Senator CARPER. You bet. Thank you.

Senator Capito has to leave for another obligation. She is going to ask her questions, and if anyone else shows up, I think Senator Sullivan is trying to join us. If no one else shows up, I will have some questions to ask.

Senator Capito.

Senator CAPITO. Thank you, and thank all of you. It has been very interesting.

I would like to say in terms of electric school buses that West Virginia has attracted GreenPower, who is going to be in the process of manufacturing green school buses in South Charleston. So we are very excited about that.

We are also excited about some of the grants that we have already received where some of our more rural areas will be able to access electric school buses. We have terrain issues that are difficult and length of time of certain routes, unfortunately, which presents challenges. But we are at the front end here, so we are excited about that and really happy to be a player and have West Virginians working on this.

Ms. Mills, I want to ask, I mentioned in my opening statement the frustration that I have. We talk about where we compromised and how it put into this bill things that we wanted, like One Federal Decision and other things. But we also left things out on the cutting room floor, so to speak, that we didn't put in here. One of these is the greenhouse gas performance measure. There was an effort to incorporate that into the bill and a requirement for our States to set certain stages. But we did not include that in there.

However, the Federal Highway Administration is coming back for a proposed rulemaking to establish a greenhouse gas emissions performance measure requiring States to set declining targets. I don't know practically speaking how that plays into your bidding and your perception of how this might impact further construction but also further implementation of this bill.

Ms. MILLS. I think, again my location in Pennsylvania, I'm not in an urban area. I am in a more rural part of the State. So it is going to be the distances that we travel and the kind of work that we do. It is going to be a challenge.

Senator CAPITO. I would agree with that.

Mr. Bauer, do you have a comment on that?

Mr. BAUER. Yes. This is a situation that a lot of States are addressing individually. It is very reflective of the different challenges that States have with respect to their trying to tackle climate change.

But this is not dissimilar from what I referenced previously about Waters of the U.S. In fact, it is almost the same playbook. We had an Obama administration proposal in 2015 that the Trump administration repealed, and it is the continual changing of the regulatory regime as we are trying to implement long term transportation plans as well as projects that don't exactly follow a calendar year. I think that the way you all approached greenhouse gas emissions with respect to certain discretionary grant programs and eligibility for States, given the lack of common ground that exists right now, is a nice way to try to prevent that continual changing of regulatory requirements that are really not conducive to delivering projects in a timely manner.

Senator CAPITO. Thank you for that. I suppose at this point in my career I can't claim to be naïve, but I think the intent of our legislation is what should be directing certain Administration's cabinet officials on how we want to see these things proceed. But we all know that the rules and regulations are really where the rubber meets the road, so to speak. There is still enough leeway in there to be able to have the administrations put their foot on the pedal one way or the other. That is what we see happening.

Mr. Johnson, you mentioned that you had in your industry made great strides in terms of emissions and bringing emissions down. Do you have an opinion on this particular part of what the Federal Highway Administration is doing right now?

Mr. JOHNSON. The legislation needs to be followed; States and companies need to be given flexibility. Give us some guidelines; give us some goals. Let the companies figure out how to reach it.

Senator CAPITO. Right.

Mr. JOHNSON. But I think it is inappropriate for agencies to be creating their own standards that are not in line with legislation that was passed by Congress.

Senator CAPITO. Thank you. That goes to what Ms. Mills was saying, and my State alone, we are a rural State. We don't have the congestion of traffic that a lot of our more urban areas have.

So in order for us to bring our targets down and show improvement it is going to be really difficult. Because it is almost like I am not going from 100 to 90, I am going from two to one. Sometimes that is very, very difficult.

So the flexibilities that we tried to build in throughout this bill are absolutely critical. And the things that we left out of the bill were intentionally negotiated between the Chair and I, because we felt like our projects would move quicker, we would eliminate some of the delays. We would, whether the decision is to not build a new highway or to build a bypass through your entire State, let the States decide how and when to best use those dollars.

That is why I am a little, I am sort of like the repeating, whoever repeats, I am one of those, to say the flexibility portions of this are absolutely critical for our States. For the progress in everything, whether it is an electric school bus, whether it is an EV charging station, whatever it is. An EV charging station protocol that is going to be developed in L.A. is not going to work in the entire State of West Virginia. So we need to look at other options. I think that is what is critical, and I thank all of you for what you are doing to try to keep that flexibility in to match what our intent was in the bill.

Thank you, Mr. Chair.

Senator CARPER. Thanks again. I will slip out to make a quick phone call; she is going to hold the gavel and try to keep this guy under control.

We welcome and recognize a Marine Colonel who needs no introduction, Danny Sullivan.

Mr. SULLIVAN. Thank you, Mr. Chairman.

I want to thank the witnesses for being here. Important topic.

I like to say my State is also rural. Senator Capito was talking about West Virginia. The great State of Alaska, we are a resource rich but infrastructure poor State. We are 120 times bigger than Connecticut, and we have fewer road miles. Think about that. And we have resources, minerals, oil, gas, so many things that can power the whole country and our national security and our economy. But they are hard to get to. Unfortunately, there are a lot of radical groups from the lower 48 that try to prevent Alaskans from building anything.

So what I want to do is talk about, continue this topic of permitting reform. A lot of us worked hard to get some good permitting provisions in this Infrastructure Bill. I voted for the bill. It wasn't perfect, but in part because of the permitting provisions. We need more of them, but it was a good start.

So here was my astonishment, and I think some of you might have shared it with me, that the Biden administration, which touted the bill as important for the economy and workers and infrastructure, then issued a regulation in April of this past year from their CEQ group in the White House a rule to make permitting on infrastructure much harder. We all know that.

So Ms. Mills, I want you to talk about that and maybe others. I put together what is called a Congressional Review Act, which is Congress's ability to flex its muscle and say, you know what, we really don't like that executive order, we are going to rescind it. And I was proud to say that my CRA as we call them had a vote on the Senate floor, and it rescinded the Biden permitting CEQ rule, which was an anti-permitting rule meant to stop production and building of energy projects, of roads. Unbelievable.

So that passed. The reason it passed is because we had over 50 groups in America, all the unions that build things, AGC, farmers, ranchers, you name it, they came out, chamber of commerce, literally everybody except the radical enviros, they all came to support my CRA. So can you talk about this insane CEQ rule that undermines the whole bill? Do you support my CRA? I know you do because you guys were one of the groups that supported it. What more can we do to make this Administration wake up to the fact that you can't crush the ability to get projects done? I know you love the radical enviros, Mr. President, Center for Biological Diversity, all these nut job groups.

But nobody else does. They hurt workers. They hurt the economy. They hurt the ability to build infrastructure. Can you guys talk about this? It is so important, and it is remarkable to me that we pass a bill, and then the White House would come out with rules to undermine the very ability to build infrastructure that they have touted.

Ms. MILLS. I remember when this bill was being passed, I was staying up late talking to our association director, text back and forth, like yes, let's get this done. We were so excited about this historic bill.

Again, I am right outside of Pittsburgh. We had the Fern Hollow Bridge project. We have all this money. Let's get all this work out to the contractors and my employees.

Senator SULLIVAN. And the unions, right?

Ms. MILLS. And the unions.

Senator SULLIVAN. Building trades. They are great Americans.

Ms. MILLS. Everybody wants to be at work. Everyone wants to make roads and bridges better.

Senator SULLIVAN. Yes.

So what was your view of the CEQ rule?

Ms. MILLS. It was burdensome.

Senator SULLIVAN. Make it harder to build bridges and roads, right?

Ms. MILLS. Yes.

Senator SULLIVAN. Anyone else have a view on this? You pass an infrastructure bill with permitting reform, and then you have the White House come out and say, hey, we are going to issue a rule that makes it harder to build things.

Mr. JOHNSON. Senator, Gary Johnson with Granite Construction. We have a large presence in your State.

Senator SULLIVAN. I know. You guys are great in Alaska. I have a hard question for you next.

Mr. JOHNSON. It is. And something else that confuses us, we are moving, vehicles are becoming more fuel efficient, going to electric vehicles, obviously that lowers the amount of revenue we get from the gas tax. I am sure everybody will figure out how to raise that revenue later.

But if the vehicles are becoming more energy friendly or environmentally friendly, what is wrong with building capacity?

Senator SULLIVAN. Right.

Mr. JOHNSON. We need capacity to move the freight, to move the goods, which reduces inflation. If we have a truck sitting on a highway and going 10 miles an hour, all it does is increase inflation. So we need to get over the fact that we have to continue to build capacity to keep up with the fact that we are increasing the population to say that we are producing more goods.

Senator SULLIVAN. Yes, absolutely.

Mr. JOHNSON. I agree with you.

Senator SULLIVAN. I will sum it up for all. But on permitting reform, we just need the more efficient, timely, certain permitting. We are not cutting corners. I mean, in Alaska, we love our environment. But it shouldn't take 8 years to permit a bridge. We had a gold mine in Alaska, it took 20 years to permit. The Kensington Mine, it now employs over 400 people, average wage over $110,000. It took 20 years. That is insane.

The only people that helps is the Chinese Communist Party and the radical enviros. That is my view.

Mr. JOHNSON. I worked on permitting a quarry in southern California that took over 20 years.

Senator SULLIVAN. Yes. Makes no sense.

Mr. Bauer.

Mr. BAUER. Senator, the elements of the solution are exactly what you described, which is certainty, focus on time. But I think what is overlooked a lot of times, Mr. Johnson sort of addressed this. When we deliver infrastructure improvements, they can have a positive environmental impact.

Senator SULLIVAN. Oh, sure.

Mr. BAUER. Cars moving at free flowing speeds of traffic produce fewer emissions than those in stop and go traffic that I took to get here this morning. I think that end point also has to be part of the discussion and the consideration of permitting when we are at the initial stages. The legislation that you all put in place last year, which again, thank you for that, has the elements of what we need to be able to move forward. It just needs to be implemented as you directed.

Senator SULLIVAN. Good.

Well, I want to thank all the witnesses.

Mr. Chairman, thank you. You and I have talked about this many, many times. I think we are on the same page. Common sense permitting reform is something that every American, regardless of political party, regardless of where you live, agrees with. That is what we try to get done in this bill.

I think it was a good start. But the Administration now is undermining it, and it makes no sense. So we are going to keep fighting to enable people to build infrastructure in our great Nation. It shouldn't take 10 years to permit a bridge or 20 years to permit a gold mine or a quarry.

I know we have problems, Mr. Johnson, in Alaska and other places, you mentioned 20 years in California on a quarry. We have to do better. We are very focused on it. I am certainly, it is an obsession of mine that we are going to continue to focus on.

Thank you again, all of you, for being here.

Mr. Chairman, I continue to look forward to working with you on these issues.

Senator CARPER. You bet. Thanks very much.

With respect to permitting reform, my hope is that we can move forward on that issue. I think it is important. I think both Democrats and Republicans believe it is important to continue to protect our environment as we go through permitting reform, and to keep in mind the least of these, including Native families up in Alaska.

Thanks so much for joining us and for your passion and good work.

I promised I was going to ask all of you to answer the same question. I want a fairly short answer, because I have a number of questions to ask. We are into our first vote on the floor, so I don't have forever. So just be brief, right to the point.

Start with Mr. Stanberry. Here is the question. Maybe pick one major point where you think you are all in agreement. This is important for this Committee, that you say, if you don't remember anything else, remember this, and this is something we all agree on. Go ahead.

Mr. STANBERRY. I think we all agree that this is a transformational bill. The private sector is ready to take it on. We all need help getting the rules right, to your point, the refinements, so that we have clear rules of the road that encourage business investment going forward. I think we can 100 percent all agree to those points.

Senator CARPER. Good, thanks.

Mr. Levy.

Mr. LEVY. In addition to agreeing with Mr. Stanberry, I think the one theme that I heard a couple times from everybody is that there are a lot of best practices already existing that we can leverage together. That requires some stakeholder engagement.

It also requires some working through implementation of the individual States that are putting out awards to say, hey, here is something we have seen in other grant programs or in other recycling programs or anything else that has come up today. I think the power of leveraging best practices can help reduce the time to deploy and really make sure that we are implementing responsibly and effectively.

Senator CARPER. Thank you, Mr. Levy.

Mr. Bauer.

Mr. BAUER. A big part of this discussion, and I appreciate your convening the hearing, is trying to talk about how the legislation that you all crafted and shepherded through is impacting lives. I think we can't do that enough. When we get to the point where the Bipartisan Infrastructure Law has to be reauthorized, if Members of Congress and the American public don't know exactly how they have benefited and how greatly it changed the quality of life and the American economy, then our challenge of continuing the trajectory and maintaining the progress that you all made is going to be even greater. We have to do more of that as the years go forward.

Senator CARPER. Thanks, Mr. Bauer.

Ms. Mills.

Ms. MILLS. Yes, I again thank you for this historic bill. We are really excited about it here in Pennsylvania and in our company. I think I am echoing what everybody else is saying. There are some challenges to it. There is a little bit of uncertainty. But we look forward to benefiting from it.

Senator CARPER. OK, thanks.

Mr. Johnson.

Mr. JOHNSON. They mentioned the reauthorization. But even before that, it is important that we get a full year of appropriations out and we don't have continuing resolutions.

Senator CARPER. Amen.

Mr. JOHNSON. We have to get the money to the States and let them spend it. It is inflationary to continue to push things down the road.

Senator CARPER. Business needs certainty and predictability. That is one of the first things I ever learned as a cub State treasurer at the age of 29. I will take that with me to the grave.

We have Senator Padilla joining us by Webex.

Alex, we are in the middle of a vote, but go ahead and take a few minutes. Please go right ahead.

Senator PADILLA. Thank you, Mr. Chairman. Thank you for the flexibility. As you know, I am simultaneously in Judiciary Committee. I appreciate the opportunity to join virtually.

I will just jump right into it. Strengthening our electrical grid is an ongoing effort, particularly in my home State of California. Two years ago you may recall an extreme summer heat wave placed so much stress on the grid that rolling blackouts were imposed on many customers across the State. This September, triple digit temperatures during an extreme heat dome event presented a similar challenge to the grid with peak electricity demands reaching a new all time high.

This time, however, there were no rolling blackouts. We had hundreds of thousands of Californians who took voluntary steps to reduce their energy consumption to thank for that. We also have improved an energy storage system to thank. Between 2020 and this year's heat wave, California installed over 3,000 megawatts of new battery storage. I am proud to have led the effort to include $5 billion in the Bipartisan Infrastructure Law to enhance the physical resilience of the electrical grid in response to extreme weather events and natural disasters.

Electric vehicles draw power from the grid, but some models coming to the market soon will have the capacity to return power to the grid.

[Audio gap] intense demand or serve as their own residential or community power generators, a system of bi-directional charging.

The question is for Mr. Stanberry. How does school bus electrification, along with the rollout of vehicle to grid technology present opportunities to support improved grid resiliency, especially during emergency situations?

Mr. STANBERRY. Senator Padilla, thank you very much for the question. We are proud to be doing work with school districts in California.

Electric school buses, as folks may guess, have very large battery packs that can serve multiple purposes. Since these buses have duty cycles or use patterns that leaves them unused for much of the time, the batteries can be used to serve critical functions. In particular, they can provide power back to the grid and buildings and other devices when needed. And I would say that electric school buses are designed in part due to some of the work in California to provide that bi-directional flow. Most of them today can do this.

That means that we can provide vehicle to grid services where the buses can provide power back to the grid in times of need. We have a couple of operating vehicle to grid projects up in South Burlington, Vermont, behind Green Mountain Power, out in Beverly Public Schools in Massachusetts with National Grid. In fact, these very vehicles are being used to provide power during peak demand events.

The other thing I would note, given the Senator's outline of extreme events and community response to extreme events, we are seeing an increased interest because the batteries of these buses can be used not only to flow power back to the grid but also to buildings, and using these batteries in tandem with onsite solar generation in places like California to form a local microgrid that can use the schools, which of course are public buildings, as community resilient centers during times of natural disaster.

So really these bus batteries end up serving the purpose of a community resource.

Mr. LEVY. Senator, if I may, I think there is an additional benefit beyond the V to G side of beneficial use. What we see is that EVs, whether it is the bus side or the light duty vehicle side, have the ability to help flatten the belly of the duck curve as we see daytime utilization coinciding with peak solar generation in California and elsewhere. So there is a symbiosis there that can happen even just on the usage side of the equation.

Senator PADILLA. Thank you for that addition.

Mr. Chairman, I know my time is short, but I would like to ask one more.

Senator CARPER. Go right ahead.

Senator PADILLA. Thank you, Mr. Chairman. And it is related. I think I speak for all of us when I say we applaud President Biden's critically important goal of deploying 500,000 electric vehicle charging stations by the year 2030.

Senator CARPER. How many? Say that again. You cut out.

Senator PADILLA. Five hundred thousand.

Senator CARPER. That is what I thought you said. Go ahead.

Senator PADILLA. So to achieve this, it is clear we are going to need strong public-private partnerships and maximize incentives for electric vehicle charging infrastructure. It is notable that the Bipartisan Infrastructure Law will make generational investments in electric vehicle charging infrastructure. And I want to make sure that no one is left behind from these investments. It is critical to focus on building up charging infrastructure within communities and not just along highway corridors.

A 2021 UCLA study on electric vehicle charging found that residents of multi-family housing units were largely relying on public charging infrastructure. That is especially the case in my home State of California, where apartment buildings comprise almost one-third of all housing units.

In addition to that, residents of multi-unit dwellings tend to be more low and moderate income individuals and live in areas that are heavily impacted by the air pollution we are trying to counter.

So Mr. Levy, how can we work together toward a more equitable deployment of charging stations? And what can the Federal Government do to ensure that we are meeting the needs of families in the communities where they live, work, and go to school?

Senator CARPER. I am going to ask you to be very brief in your response.

Mr. LEVY. Yes, sir, I will be very quick.

Essentially, there are a couple of different ways. One, we vehemently agree with you that FHWA should encourage States to move quickly from corridor to also supporting community charging projects. It can do that by setting the date at which the corridors are built out as the date of obligation of funds.

Second of all, we would note that the work that Senator Carper, Senator Cardin, you, and others all did on IRA included the geotargeting of 30(c) to look at lower income, lower percentage of income census tracts. Third, private companies like EVgo have a role to play here.

What we have done is incorporated the EPA's environmental justice screen tool into our proprietary siting analysis tool so that we can say, let's make sure we are going to those disproportionately impacted communities, whether those chargers are going to be used by those very same residents that you mentioned may not have access to parking, or the ride share drivers that start and end those trips in low to moderate income communities that are disproportionately burdened by EM 2.5 and other pollutants.

Senator PADILLA. Thank you very much.

Thank you, Mr. Chair.

Senator CARPER. Senator Padilla, thank you for always, you are very faithful in your attendance on this Committee. We appreciate that, in person and remotely. Thank you for joining us in this case.

One last question, and then I have a couple of comments, then we will call it a day, and I will go vote on the floor. This question is for the entire panel. It is clear from your testimonies that private sector can partner productively with public agencies to achieve important national goals.

What advice would you give to the U.S. Department of Transportation and to the Environmental Protection Agency to ensure that as they implement Federal programs like the ones we were just talking about here today they help to elicit and leverage private sector expertise, private sector investments and innovation?

Mr. Johnson, would you go first, just very briefly?

Mr. JOHNSON. Sure. We at Granite, every company here, I am sure, trade associations, we are always eager to work with the agencies to find solutions and to move this stuff forward. One of the things that if the agencies could get out their grant application programs so we could take advantage of the authorization under IIJA and IRA to come up with innovative ways to further decrease energy use and decrease air emissions, we would be glad to do that.

Senator CARPER. Thank you.

Ms. Mills. Very briefly.

Ms. MILLS. Sure. I think I will echo what Mr. Johnson said. We are eager to get to work. We want to build those bridges so they are not falling in the State of Pennsylvania. We want to partner with any agencies for a great project.

Senator CARPER. All right. Thank you, ma'am.

Mr. Bauer.

Mr. BAUER. Yes. Similar to that, and the ongoing dialogue about the regulatory policies that were put in place. It is our industry; it very much recognizes the objectives that you all put in place and that the Administration is pursuing. And we want to be part of that solution, because we would rather be involved in the dialogue at the front end as opposed to the back end.

I think that is essential to success going forward.

Senator CARPER. I agree. Thank you.

Mr. Levy, please.

Mr. LEVY. Yes, sir. The Administration has done a great job soliciting public feedback and comment, as have the States. And we would modestly say we hope they listen to the recommendations that EVgo and other companies have submitted.

Additionally, we hope that the States and others will recognize that distributed infrastructure projects like EV charging are very different than some of the traditional projects that my colleagues to the left have worked on, where those projects may take very, very long times to build. So what is happening is often in the noise, in terms of month or two delays. Whereas we are only onsite constructing for 4 to 12 weeks. But the whole project to build an EV charging station typically takes around 12 to 18 months, soup to nuts.

So any 3 or 6 month delay from a local utility or a local permitting authority, that is an issue that we want to make sure we can all work through together, and again, use best practice practices, convene stakeholders and push forward to accelerate deployment.

Senator CARPER. Good. Thanks.

Mr. Stanberry, please.

Mr. STANBERRY. Thank you, Senator. In addition to what my colleagues have said, I would say that our advice would be to seek out structures and incentive programs that encourage cost share. I would note that that is something that was specifically called out by Congress in the law in the school bus program and has yet to be implemented. I know the Environmental Protection Agency is looking at doing that. We have strongly encouraged them to move forward expeditiously in implementing that.

I would also say to look for structures that reduce uncertainty for a business that will participate in providing that cost share, and to encourage competition amongst those businesses.

Senator CARPER. Good. Thank you.

In closing, I want to say a couple of things. I am a big believer in certainty and predictability. That has been a theme that has been permeating almost all of your testimonies.

I am privileged to chair this Committee. I am also the senior Democrat on the Committee that deals with Homeland Security and Governmental Affairs. That committee, which I used to chair, we do a lot of oversight hearings. At the end of the hearing I will ask our witnesses, what should we be doing more as an oversight committee on homeland security and governmental affairs? What advice would you have for us?

Almost every time, the witnesses would say, more oversight. The first time I heard that, it surprised me. But oversight is helpful. We worked so hard to put this bill together, this legislation together. We worked very hard with the President and his team, with the folks in the House, Democrats and Republicans. None of it, nothing that is this adventurous, this transformative, it won't be perfect.

So we are going to do a lot of oversight, and we appreciate your being part of that for us today.

I go back and forth on the train to Delaware almost every day and night. Not a week goes by that somebody doesn't say to me, I wouldn't want your job for all the tea in China. They say, you must hate your job. I love my job. I feel so lucky at any time to actually be here, involved with this climate change, trying to strengthen our economy, tame inflation. I mean, gosh, it doesn't get any better than that.

Einstein used to say, I quote him a lot, used to say that the definition of insanity is to do the same thing over and over again expecting different results. That is not the quote I use. I use the one that says, in adversity lies opportunity. In adversity lies opportunity. A lot of adversity here.

Another guy that I like to quote, Henry Ford, father of the Model T, he used to say, if you think you can, or you think you can't, you are right. If you think you can, or you think you can't, you are right. I think we can, and one of the ways we will take this transformative legislation and actually bring the most good out of it is with your help and your advice and participation.

One of the things I like to do during recess is customer calls. In fact, I do them all the time to businesses large and small in my State. I have always focused on how to create a nurturing environment for job creation and job preservation. If you want to help people, the best way is to make sure they have a job and to make sure that businesses that are doing good work are providing those job opportunities.

But I was out on the West Coast, in the Bay area, visiting a bunch of technology companies that were interested in what was done in the Inflation Reduction Act, particularly the huge piece, I think it is about a $350 million, $360 million investment in the IRA in clean energy. There are a bunch of technology companies out on the West Coast, and they are other places in our country, but they are very much interested in the provisions we put in that bill.

We visited one company, I think the name of it was Brimstone, and they are involved in a technology that enables the creation of cement that rather than increasing carbon dioxide and global emissions actually diminishes it. So you can have your cake and eat it too. We are investing taxpayer moneys in that kind of technology, just like we are investing in making sure we have roads, highways, bridges. We have to. We have to do both of those.

The last thing I would say, I like to say there is no silver bullet. No silver bullet, but there are a lot of silver BBs. You are helping us identify some of those, and for that we are grateful.

One of the silver BBs involves getting a Senate confirmed Federal Highway Administrator on the job. Again, your testimony today to that effect is helpful. I am proud of our Committee, very grateful to Senator Capito for her support. Finally, when we got an Administration that would give us a great nominee, Shailen Bhatt, actually move him through hearing and now reporting him out unanimously. We are going to try to get him before the Senate and confirmed ASAP. It would be a great early Christmas present for the people of this country. He will do a great job.

I think the other thing, I have a script here, I am going to read this, and then we will wrap it up, and I will go vote. In closing, I want to thank our witnesses for appearing before us today and sharing their perspectives on the implementation of the Bipartisan Infrastructure Law.

Before we adjourn, a little bit of housekeeping. Senators will be allowed to submit written questions for the record through the close of business on Wednesday, December 7th, Delaware Day. It is the 250th anniversary of the day that Delaware became the first State to ratify the Constitution, the day that will live in not infamy, but in glory. Delaware Day, December 7th, is the last day that my colleagues have to submit their questions, that is a week from today. We will compile those questions, sending them to our witnesses, and we are going to ask you to reply to them by Wednesday, December 21st.

The last thing, a word on inflation. After the Navy I had a scholarship at Ohio State, studied economics, my professors would tell you not enough, but enough to graduate and become a Naval flight officer, right in the middle of the Vietnam war. After the war was over, I came back to the States, and moved to Delaware to get an MBA, studied some more economics.

One of the things I learned about were the laws of supply and demand. I don't think they have really been reinvented entirely, when we are looking at prices.

One of the points I would just have us keep in mind, this guy named Putin in Russia who is a no good guy, he has invaded a little country and is killing literally dozens, scores of people every day, innocent people. It is just awful what is going on. He has used, he has been using energy policy, their energy policy in an effort to really be engaged in our election process, aiding and abetting the increasing inflation particularly at the pump and the price of energy. In Iran, we are following what is going in Iran as well.

We are determined to stop both of those countries, both of those bullies, from being successful in what they are trying to do. I wanted to mention that.

The last thing I would say, I think I was treasurer when Gerald Ford and Richard Nixon were President. And we had inflation, as I recall, we were looking at inflation, like 20 percent inflation. A guy named Paul Volcker was nominated and confirmed to serve as the head of the Federal Reserve. They raised interest rates to like 20 percent, you may recall. It choked off inflation, created a recession. But it worked, in terms of the inflation. Hopefully, that is not going to happen this time.

But hopefully, the Federal Reserve, which was AWOL for frankly too much of this year, they have now started doing their job. I think they are doing it well. Hopefully, we can navigate our way to a soft landing.

Controlling inflation is a team sport, and the Federal Reserve has a big responsibility to do that, as do the rest of us, and the private sector, companies like Brimstone, are coming through. There is a bunch of them, and they are providing jobs and doing good things for our planet.

That is for me like the Holy Grail, how do we save this planet. It is the only one we are going to have. President Biden is having a state dinner tomorrow tonight. The President of France, President Macron, is going to be there. President Macron spoke to a combined session of the House and Senate about 3 years ago. I will never forget what he said. He spoke in English brilliantly. He said, there is no planet B. That is what he said. He said, there is no planet B. He said, this is the only planet we are going to have.

So we have an obligation to take care of it. And thank you for your commitment to that as well. We are determined to walk and chew gum at the same time, do good things for our economy, do good things for job creation in this country, and do good things so our kids will have a planet they can be proud of and live on for a long time to come.

With that, it is a wrap. God bless you all, and happy holidays. Thanks so much.

We are adjourned.

[Whereupon, at 12:04 p.m., the hearing was adjourned.]

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