

Infrastructure Investment and Jobs Act: A Look Ahead for the Automotive Industry

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President Joe Biden signed the Infrastructure Investment and Jobs Act into law as one of his administration's foremost priorities. Enacted by Congress with broad bipartisan support, the law is being lauded for the historic and generational investment it makes in aging American infrastructure and focuses on emerging automotive technologies and clean energy. The many months (and years) ahead will be devoted to implementing the law, including shaping the new federal programs and standards that the law creates. As that work occurs, there are important considerations for the automotive industry to keep front of mind.

Electric vehicles (EVs) and alternative fuel vehicles (AFVs) economic opportunities

The infrastructure law is an economic boon not just for traditional infrastructures like roads, bridges, and ports, but also for the manufacturing of EVs and AFVs. The law directs the Secretary of Transportation to establish a $2.5 billion competitive grant program for deploying infrastructure for EV charging, propane fueling, and natural gas fueling, and adds $5 billion for a National Electric Vehicle Formula Program for states to deploy EV charging infrastructure. When considered alongside President Biden's executive order to make 50% of all new vehicles sold in 2030 zero-emission, these programs are clearly aimed at growing consumer demand for EVs and AFVs and building the infrastructure to support them. In addition, the law includes $5.25 billion for the Low-No (emission) vehicle grant program, which is available to state and local authorities for purchasing or leasing zero- or low-emission transit buses and supporting facilities. These provisions mark an unmistakable policy shift toward clean vehicles. Associated economic opportunities will be abundant.

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New federal rules on the horizon

Oversight comes hand-in-hand with economic opportunity. The infrastructure law directs the Secretary of Transportation to issue new rules related to automotive transportation and passenger safety. The rules will, at minimum, require manufacturers to install:

- Automatic shutoff devices aimed at preventing carbon monoxide poisoning
- Forward collision warning and automatic emergency braking systems
- Advanced drunk and impaired driving prevention technology
- Rear-seat alert technology
- Set new performance standards for crash avoidance technology

The law further requires the secretary to conduct studies on commercial vehicle crash causation, rollaway in vehicles with keyless ignition, reduction of driver distraction and disengagement, and detection of pedestrians and bicyclists by connected vehicle systems—some or all of which could result in additional federal rules or performance standards. To the extent manufacturers are not already preparing for changes in federal rules, they should be.

Potential privacy concerns

In particular, the infrastructure law requiring that vehicles be equipped with advanced drunk and impaired driving prevention technology raises privacy concerns. While the Department of Transportation has not announced what kind of technology will meet the infrastructure law's requirement, according to the law, the system will need to, at minimum:

- Passively monitor the performance of a driver
- Prevent operation of the vehicle if impairment is detected
- Passively and accurately detect whether a driver's blood alcohol concentration exceeds the legal limit
- Prevent operation of the vehicle if an illegal blood alcohol concentration is detected

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What will DOT ultimately require? Will the breath- and touch-based detection systems that some manufacturers have been testing for years be enough, or will manufacturers need to go further? Moreover, how will drivers' data be collected and stored, and who will have access to it? Even advocates of the infrastructure law's requirement are voicing concerns.

Future enhanced tax credits for union assembled EVs

Beyond the infrastructure law, the automotive industry should also follow the Build Back Better Act—another of President Biden's major legislative priorities. A skinny-downed version of the bill from the House of Representatives increases the tax credit available for purchasing qualifying EVs to $12,500. But part of the credit increase would only be available for plug-in EVs that are assembled in US factories with a unionized workforce. The credit enhancement is designed to not only incentivize EV purchases but also steer consumers to manufacturers using union factories. Major EV manufacturers that do not operate union factories have criticized the tax credit as unfairly favoring domestic manufacturers that do. The Senate Finance Committee's version of the bill includes a tax credit for union-assembled two- or three-wheeled EVs, but the tax credit for four-wheeled EVs is not limited to union-assembled vehicles. This may be due to indications that a tax credit limited to all union made EVs would face stiff Senate opposition. Of course, there is no doubt whether any version of the Build Back Better Act will be passed by the Senate.

Frost Brown Todd stands ready to assist automotive clients prepare for and monitor implementation of the historic Infrastructure Investment and Jobs Act. For more information, please contact Nolan Jackson or any attorney with Frost Brown Todd's Automotive industry team.

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