



Infrastructure Bill and Big Labor Influence

By Trey Kovacs, Senior Fellow

Introduction

After months of negotiations, the United States Senate passed the 2,072-page and \$1.2 trillion Infrastructure Investment and Jobs Act, H.R. 3684, on August 10, 2021. The infrastructure bill is expected to be enacted despite some opposition in the House of Representatives.

Many parts of the bill have been hotly debated— spending priorities, how many projects are shovel-ready, and concerns over adding to the federal deficit and the national debt. One critical part of legislation that has escaped analysis is the significant influence given to labor unions to shape future infrastructure policy.

Littered throughout the legislation are provisions that designate seats for labor union officials on boards, advisory committees and working groups, requirements that grant applicants collaborate with labor organizations, mandates that federal agencies and grantees consult with labor unions on infrastructure plans, funding for union training programs, and wage requirements based on union pay.

Unions Get a Seat at the Table

Through H.R. 3684, Congress empowers labor unions to directly advise and influence federal agencies on how best to implement several provisions of the bill. This objective is achieved by requiring labor union representatives to be members of a variety of boards, advisory committees, and task forces. In total, labor unions are given positions of influence on ten boards and similar entities.

Labor organizations' position on boards will give them influence over many aspects of infrastructure policy by having direct input on how federal agencies implement the bill. Labor unions will be able to use this influence to shape policy by issuing reports, tracking grant recipient progress, and consulting with federal officials on how to award grants and offer policy recommendations.

Below is a brief summary of each board where a labor representative is a member:

- Union representatives are required members of advisory boards that grant award recipients of the **“Reconnecting Communities Pilot Program.”** The legislation encourages grant awardees form these advisory boards. Total funding for these “planning” and “capital construction” grants is \$500 million. As advisory board members, they seek to track progress of grant commitments concerning inclusive employment, contracting, and economic development.¹
- At least one member from a labor organization must be appointed to the working group to study access to covered resources for infrastructure purposes. The working group will study the **use of covered resources** funded with federal dollars, how proximity of resources affects the economic and environmental costs, whether State, Tribal, and local transportation and planning agencies consider covered resources when making a plan, and any challenges.²
- Labor organizations representing employees in freight industries are part of an advisory committee to the **national cooperative freight transportation research program** that is created by the Secretary of Transportation. This advisory committee will create a national research agenda for the program and a strategic plan on improving the efficiency and resiliency of freight movement. Each fiscal year, \$3,750,000 is appropriated to the Secretary of Transportation to carry out this program.³
- Amtrak is mandated to create a **food and beverage service working group** to provide recommendations to improve the rails onboard food and beverage service. Labor unions that represent Amtrak food and beverage employees are members and will contribute to the report on how to improve the service.⁴
- A **“Truck Leasing Task Force”** created by the Secretaries of Transportation and Labor must include at least one representative from a labor organization. The task force will examine common truck leasing agreements. The task force will search for inequitable truck leasing terms and how they may affect safety, trucker compensation, and compliance with applicable laws. The task force’s report will include findings, best practices, and recommendations.⁵
- At least two union representatives must be appointed as members to the **“Advisory Committee on Underride Protection.”** The committee will provide guidance and recommendations to the Secretary of Transportation on safety regulations to reduce underride crashes and associated fatalities.⁶
- A representative from a labor union with energy experience, which is nominated by a national labor federation, must be included in an **advisory board that seeks to support and develop a skilled energy workforce.** The board will determine if the Energy Department can be more efficient in developing a skilled energy workforce and identify how the Department can work with other entities, including labor unions, governments, and colleges. The board will deliver a report to the Energy Secretary.⁷

¹ TITLE I—FEDERAL-AID HIGHWAYS, Subtitle E—Miscellaneous, SEC. 11509. RECONNECTING COMMUNITIES PILOT PROGRAM.

² TITLE I—FEDERAL-AID HIGHWAYS, Subtitle E—Miscellaneous, SEC. 11526. WORKING GROUP ON COVERED RESOURCES

³ TITLE I—MULTIMODAL AND FREIGHT TRANSPORTATION, Subtitle B—Multimodal Investment, SEC. 21204. NATIONAL MULTIMODAL COOPERATIVE FREIGHT RESEARCH PROGRAM

⁴ TITLE II—RAIL, Subtitle B—Amtrak Reforms, SEC. 22208. PASSENGER EXPERIENCE ENHANCEMENT. (b) FOOD AND BEVERAGE SERVICE WORKING GROUP

⁵ TITLE III—MOTOR CARRIER SAFETY, SEC. 23009. TRUCK LEASING TASK FORCE

⁶ TITLE III—MOTOR CARRIER SAFETY, SEC. 23011. UNDERRIDE PROTECTION

⁷ TITLE VIII—SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY DIVISION C—TRANSIT, SEC. 30012. PUBLIC TRANSPORTATION SAFETY PROGRAM.

- A safety committee is created to support the **Public Transportation Agency Safety Plan**. Membership on the committee consists of equal number of frontline union representatives and management. These safety committees will identify and recommend risk-based strategies for reducing the “likelihood and severity of consequences identified through the agency’s safety risk assessment.”⁸
- A working group is established to make recommendations regarding **developing and adopting electric vehicles** into the U.S. transportation and energy systems. The Secretary of Energy chairs the working group and is empowered to appoint up to 25 members, including labor unions representing members in transportation, manufacturing, and construction. Members of the working group will produce a report and provide input to other inter-agency working groups developing policy related electric vehicle matters.⁹
- The bill expands the membership in the existing **intelligent transportation systems program advisory committee** to include a representative of a labor union. Duties of the board include developing and annually reviewing the intelligent transportation system, and create a report.¹⁰

Mandated Collaboration or Consultation with Labor Unions

If H.R. 3684 is enacted, labor organizations will wield considerable authority in shaping its implementation since the legislation mandates collaboration or consultation with union representatives under several circumstances.

For example, a section of the legislation establishes a grant program to deploy publicly accessible electric vehicle charging and fueling infrastructure.¹¹ This massive five-year, \$2.5 billion program allows state and local governments primarily to receive grants up to \$15 million. To receive a grant under this program, an entity must submit an application to the Secretary of Energy which describes how it has considered collaborative engagement with labor organizations.

Numerous bill provisions require federal agencies consult with labor organizations prior to implementing plans or policies:

- The **Secretary of Transportation** is required to establish a program to facilitate the development of intercity passenger rail corridors. Before implementing a service development plan, labor unions must be consulted.¹²
- **Administrator of the Federal Railroad Administration** is required to begin pilot programs to evaluate railroad scheduling practices. When designing and conducting these pilot programs, the Administrator must consult with representatives of labor organizations representing the impacted employees.¹³

⁸ TITLE VIII—SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY DIVISION C—TRANSIT, SEC. 30012. PUBLIC TRANSPORTATION SAFETY PROGRAM.

⁹ TITLE V—RESEARCH AND INNOVATION, SEC. 25006. ELECTRIC VEHICLE WORKING GROUP.

¹⁰ TITLE V—RESEARCH AND INNOVATION, SEC. 25001. INTELLIGENT TRANSPORTATION SYSTEMS PROGRAM ADVISORY COMMITTEE.

¹¹ Subtitle D—Climate Change, SEC. 11401. GRANTS FOR CHARGING AND FUELING INFRASTRUCTURE.

¹² TITLE II—RAIL, Subtitle C—Intercity Passenger Rail Policy, “CHAPTER 251—PASSENGER RAIL PLANNING, Sec. 25101. Corridor Identification and Development Program.

¹³ TITLE II—RAIL, Subtitle D—Rail Safety, SEC. 22408. COMPLETION OF HOURS OF SERVICE AND FATIGUE STUDIES.

- A section requires the **Secretary of Transportation** to consult with labor unions representing engineers or conductors when conducting audits for the “training, qualification, and certification programs of locomotive engineers and conductors of railroad carriers.”¹⁴
- The **Transportation Research Board** must consult with labor organizations when conducting a study of the impacts of various methods of driver compensation on safety and driver retention.¹⁵

Taxpayer Funded Union Training Programs

Labor unions are direct beneficiaries of taxpayer funds under the legislation. Specifically, union training programs are eligible recipients of funds to train employees in various career fields and conduct assessments of manufacturers.

Under the section “**Career Skills Training,**” a program is created to award grants to eligible entities that provide classroom instruction and on-the-job training for the purpose of obtaining an industry-related certification to install energy efficient buildings technologies.¹⁶ To be an eligible entity under this section, you must be a nonprofit partnership that includes the equal participation of industry and labor organizations, including labor-management training programs. The amount provided to fund these grants is \$10 million.

Existing law is amended to drive business to and directly fund labor unions to define a union training program as an “**Industrial Research and Assessment Center**” (IRAC).¹⁷ Under this program run by the Department of Energy, IRACs assess small and medium-sized manufacturers to identify opportunities to optimize energy efficiency.

IRACs have an opportunity to receive considerable funding under the infrastructure bill. The Secretary of Energy is tasked with funding the establishment of new IRACs at union training programs (and other entities) and funding their outreach and coordination activities. Further, small and medium-sized manufacturers are given priority for grants to improve their energy efficiency if an IRAC completes its energy assessment. In total, \$550 million is appropriated to carry out this program by the Secretary of Energy, with \$150 million for the activities of IRACs and \$400 million for Implementation Grants for Industrial Research and Assessment Centers.

Union Wage Requirements

A provision of the legislation that is contrary to an overriding theme of the bill is applying the **Davis-Bacon Act** (DBA) prevailing wage requirements to specific classes of employees. All laborers and mechanics employed by contractors on projects under this division shall be paid prevailing wages on similar projects in the area.¹⁸

¹⁴ TITLE II—RAIL, Subtitle D—Rail Safety, SEC. 22410. OPERATING CREW MEMBER TRAINING, QUALIFICATION, AND CERTIFICATION.

¹⁵ TITLE III—MOTOR CARRIER SAFETY, SEC. 23022. APPRENTICESHIP PILOT PROGRAM.

¹⁶ TITLE V—ENERGY EFFICIENCY AND BUILDING INFRASTRUCTURE, Subtitle B—Buildings SEC. 40513. CAREER SKILLS TRAINING.

¹⁷ TITLE V—ENERGY EFFICIENCY AND BUILDING INFRASTRUCTURE Subtitle C—Industrial Energy Efficiency PART I—INDUSTRY SEC. 40521. FUTURE OF INDUSTRY PROGRAM AND INDUSTRIAL RESEARCH AND ASSESSMENT CENTERS

¹⁸ TITLE XI—WAGE RATE REQUIREMENTS SEC. 41101. WAGE RATE REQUIREMENTS.

Prevailing wage requirements raise the costs of federally funded construction because they peg the wages for specific occupations to the union rate in the area (rather than the average wage), impose burdensome paperwork on employers, and stifle competition.

Aside from the economic disadvantages from the prevailing wages, however, it is one of the last remnants still on the books from the Jim Crow era. Congress passed the DBA in 1931 to favor white workers who belonged to white-only unions over non-unionized black workers.¹⁹ The discriminatory effects of the legislation continue today by favoring white skilled workers. Furthermore, setting prevailing wages at the union rate is discriminatory against the majority of the construction industry as only 12.8 percent of construction workers are members of a union.²⁰

As the House considers H.R. 3684, it should debate how including DBA requirements is contrary to language that calls for supporting minority-owned businesses, inclusive economic development, and removing barriers to minority communities.

Conclusion

With union membership on a decades-long decline, labor organizations have chosen to use their political influence to urge Congress and regulators to overhaul labor law and rules to ease union organizing and accumulate more power. That strategy is on display in H.R. 3684. It mandates labor organizations be at the table to determine who gets the grants, how programs are structured, and research subjects. Labor organizations will influence many federal infrastructure projects. As to the buildout of the nation's new infrastructure, labor organizations have an opportunity to build a better tomorrow or secure their own narrow interests.

¹⁹ David Bernstein, "The Davis-Bacon Act: Let's Bring Jim Crow to an End, Cato Institute, January 18, 1993, <https://www.cato.org/sites/cato.org/files/pubs/pdf/bp017.pdf>.

²⁰ See, <http://unionstats.gsu.edu/>.