



Federal eTOD legislative efforts in the 116th Congress (2020)

Prepared by Mariia Zimmerman, MZ Strategies LLC

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In the US House of Representatives

Key eTOD provisions in the [INVEST Act](#)

Note: the bill was passed by House of Representatives as part of HR 2, The [Moving Forward Act](#) on July 1, 2020) – see T4America blog at the end of this summary for their take on what happens next with this legislation

- **Transit is nothing without the public.** Numerous changes in the INVEST Act recenter the federal transit program on the people who rely upon it. From adjustments to improve service for people with disabilities, including allowing paratransit riders to make essential stops to drop kids off at daycare or stopping at the pharmacy; to incentivizing frequency in the urban formula bus program. *“Supporting All Riders Sec. 2501. Low-income urban formula funds. [49 USC 5336(j)] doubles the urban formula low-income set aside from 3% to 6%. Expands the formula to include an emphasis on the low-income population in urban census tracts with a poverty rate above 20 percent. Requires transit agencies to ensure they are serving low-income individuals.”*
- **Transit-Supportive Communities. (Section 2701)** Thanks to Congressman García (IL-4), who earlier introduced [ETOD stand-alone legislation](#), the House bill includes an entire new section within the Transit Title that establishes an ,
- **Eases the ability to re-purpose surplus land for affordable housing. (Section 2702)** Proposed changes would allow FTA grantees to transfer property no longer needed to a local government authority, non-profit, or other third party for the purpose of transit-oriented development. Most importantly, it releases the Federal interest in that asset, which has been a major barrier to redevelopment. In order to utilize this flexibility, at least 15 percent of the housing units in such a project must be offered as affordable housing. For transit agencies like Sound Transit and BART who have aggressively been pursuing affordable TOD, this is surely welcome news. But even for smaller transit agencies who have purchased land for maintenance facilities or other purposes where redevelopment may be a better use this is important.
- **Incentives to pursue affordable housing when expanding transit. (Section 2703)** Important adjustments were [made in past authorizations and federal guidance](#) to introduce consideration

of affordable housing when new transit lines are being planned. The INVEST Act takes this further by providing multiple incentives in the Capital Investment Grant program's rating process so that projects with greater commitment to affordable housing preservation and development are more competitive. It also explicitly allows Economic Development Administration (EDA) Public Works grants and Department of Housing and Urban Development (HUD) Community Development Block Grants to be counted as part of the local share, provided that the funds are used in conjunction with an affordable housing development.

- **Redefining joint development. (Section 2102)** The INVEST Act amends the [FTA Joint Development Program](#) to remove the fair share revenue requirement for transit-oriented development projects that include 50 percent affordable housing. Affordable housing advocates have long advocated for this change given that it stymied the ability of non-profit housing groups to work with transit agencies on projects that included discounted land agreements.
- **Bringing art back into transit. (Section 2103)** For years, beginning with ISTEA, transit funding could be used to support local artists in designing and beautifying transit stations and stops. You may recall poetry inside MTA subway cars, stunning mosaics at Seattle's bus terminal, or etched glass work in bus stops that helped to brand transit and create a safe but lovely place to wait. The FAST Act prevented the use of transit for such funds out of mean short sightedness. Art in transit is a powerful tool to engage community, affirm local culture and identity, and make transit a foundation of neighborhood identity.
- **TOD Loans** The Railroad Rehabilitation and Improvement Financing (RRIF) program provides direct loans and loan guarantees to finance development of railroad infrastructure. The section makes permanent the authority for transit-oriented development project loans, and it clarifies that RRIF loans may be used as the non-Federal share of project costs if such loans are repaid from non-Federal funds.
- **Finally, look for ETOD-supportive provisions in the Highway title, too. (Title I)** A number of new programs such as the Community Climate Innovation grants, or adjustments to popular programs like Transportation Alternatives and even federally-required planning considerations, elevate projects that can reduce greenhouse gas emissions, connect housing and land use with transportation, and elevate equity impacts.

Notable eTOD related amendments to the INVEST Act

- **Amendment to kill new program to help coordinate housing and transit.** Strikes Section 2701: *The Transit Supportive Communities program which creates an office, a grant program and technical assistance for transit and housing planning. Rep Perry (PA04-R) – Failed; Perry also offered a failed amendment to strike the FTA Authorizations!*
- **Expand TIFIA program** used to finance infrastructure projects to include residential and commercial development that is part of a TOD project eligible for TIFIA financing while adding a 15 percent annual cap on these types of projects. [This provision was also included in the Senate’s first reauthorization proposal last year.](#) TIFIA stands for the Transportation Infrastructure Finance and Innovation Act. **Rep Cohen (TN07-D) - Withdrawn**

Updated Heroes Act

Rep. Smith (D-WA) successfully included a provision in the Updated Heroes Act passed by the US House of Representatives in October 2020. The provision that would give federal entities an easier path to transfer unused land to nonprofits and community-based organizations for ETOD projects.

STAND ALONE ETOD LEGISLATION

Representatives Jesús “Chuy” García (IL-04) Bonnie Watson Coleman (NJ-12), and Steve Cohen (TN-09) introduced H.R. 7074, the Promoting Equitable Transit-Oriented Development and Mobility Corridors Act. The legislation establishes an Office of Equitable Transit-Oriented Development in the Department of Transportation (DOT), promotes affordable housing near transit, and reduces vehicle miles traveled and carbon emissions. It will also allow rural, suburban, and urban governments to develop more equitable planning practices through technical assistance grants. The full text can be found [here](#). The bill is supported by Smart Growth America, Natural Resources Defense Council, LOCUS: Responsible Real Estate Developers and Investors, Transportation for America, Elevated Chicago, The Chicago Community Trust. *Note: portions of this bill were included in the INVEST Act*

Reps. Earl Blumenauer, D-Ore., Mike Kelly, R-Pa., Darin LaHood, R-Ill., and Dan Kildee, D-Mich., introduced (HR 6175) The Revitalizing Economies, Housing and Businesses (REHAB) Act of 2020, would create a rehabilitation tax credit of 15 percent to 25 percent for buildings that are more than 50 years old and are within a half-mile of a public transportation center. which is intended to work alongside the federal historic tax credit. The REHAB Act would reinstate the expired 10 percent credit for non-certified historic buildings as a 15 percent credit for properties placed in service at least 50 years earlier—a credit that could also be used for building expansion on the same block as a qualifying building. The legislation includes a 25 percent credit for rent-restricted housing that meets the other requirements and a 25 percent credit for expenses related to public infrastructure projects required by government. Blumenauer’s office also released [a section-by-section summary](#) of the bill.

Rep DeSaulnier (CA-11) – (H.R. 5783) The Equitable Transit Oriented Development Act would make community development financial institutions (CDFIs) eligible to receive federal transportation infrastructure loans for transit-oriented development (TOD) projects, such as affordable housing, health centers, and early childhood facilities. The bill would add CDFIs to the eligible entities for TOD loans under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program through the Department of Transportation. Legislation is supported by LISC.

Rep. Peters (D-CA) and Cathy McMorris Rodgers (R-WA) HR 4307 “Build More Housing Near Transit Act - The legislation would require major transit projects pursuing Federal Transit Administration (FTA) New Starts capital investment grant funding to holistically evaluate the feasibility of housing development near transit station areas as a part of their application process. In addition to evaluating feasibility of housing, project sponsors would also need to secure a commitment of supportive land use policies from their local governments that support both affordable and market-rate housing needs associated with the transit investment. The Build More Housing Near Transit Act is supported by American Planning Association, Circulate San Diego, Enterprise Community Partners, Habitat for Humanity, Housing Advisory Group, Local Initiatives Support Corporation, Mortgage Bankers Association, National Apartment Association, National Association of Home Builders, National Association of REALTORS®, National Housing Trust, National Leased Housing Association, National Multifamily Housing Council, Prosperity Now, and Regional Plan Association. For more information on the Build More Housing Near Transit Act, please take a look at [Up for Growth Action's one page summary](#). *Note: significant portions of this bill were included in the INVEST Act*

Rep Heck (D-WA) and Hollingsworth (R-IN) HR 4351 The Yes In My Backyard (YIMBY) Act - The YIMBY Act encourages localities to eliminate discriminatory land use policies and remove barriers that prevent needed housing from being built around the country. The YIMBY Act requires CDBG recipients to report periodically on the extent to which they are removing discriminatory land use policies and implementing inclusive and affordable housing policies detailed in the bill (including creating TOD Zones and reducing or eliminating parking requirements and donating vacant land for affordable housing). It increases transparency in land use, zoning and housing decisions; sheds light on the exclusionary policies and ultimately encourage localities to eliminate much needed housing. (Senator Young (R-IN) introduced the Senate companion bill, S.1919)

In the Senate the transportation bills are spread across committees

1. Environment and Public Works (EPW) – surface transportation / highway provisions
2. Commerce – Railroads and interstate commerce
3. Banking – Transit provisions and presumably focus for TOD; also has jurisdiction for Housing

Senate EPW’s [America’s Transportation Infrastructure Act of 2019](#), is a five-year, \$287 billion bill that includes \$259 million for formula programs to maintain and repair United States roads and bridges. This bill was introduced in 2019 by Senators John Barrasso (R-WY), committee chairman, Tom Carper (D-DE), committee ranking member, Shelley Moore Capito (R-WV), chairman of the EPW Subcommittee on Transportation and Infrastructure), and Ben Cardin (D-MD), ranking member of the EPW Subcommittee on Transportation and Infrastructure. Related to TOD, it includes the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) amendments in the form of updates to the TIFIA program to increase utilization, streamline the application process, and increase transparency in the vetting process for projects seeking TIFIA funds. Expands program eligibility to airport projects and additional transit-oriented development projects, subject to a cap and sunset. Extends the authorization of State Infrastructure Bank program through fiscal year 2025.

S. 2805 –Sen. Wicker (R-MS) - TOD Advancement Act of 2019. This bill revises and extends until December 4, 2021, the Railroad Rehabilitation Improvement and Financing program, to specifically authorize DOT to provide transit-oriented loans and loan guarantees, and revises eligibility to including

financing economic development that incorporates private interest in a project above 20% of the total costs, and is physically connected to a passenger rail or multimodal station. Construction must begin within 90 days after the loan or loan guarantee.

Senator Young (R-IN) – S. 1919 The Yes In My Backyard (YIMBY) Act - The YIMBY Act encourages localities to eliminate discriminatory land use policies and remove barriers that prevent needed housing from being built around the country. The YIMBY Act requires CDBG recipients to report periodically on the extent to which they are removing discriminatory land use policies and implementing inclusive and affordable housing policies detailed in the bill (including creating TOD Zones and reducing or eliminating parking requirements and donating vacant land for affordable housing). It increases transparency in land use, zoning and housing decisions; sheds light on the exclusionary policies and ultimately encourage localities to eliminate much needed housing. (Rep Heck (D-WA) and Hollingsworth (R-IN) introduced the House companion bill, HR 4351).

EDITOR'S NOTE: Neither Senate nor House has passed or proposed any legislation to PAY FOR transportation reauthorization, including what was included in the INVEST Act. Most feel it is highly unlikely that a major transportation reauthorization will happen given challenges of how to pay for it; and Congressional dysfunction but many advocates are pushing to have elements including in a future COVID recovery bill. Senate Banking committee has not been particularly focused on TOD with bigger concerns regarding fiscal crisis of transit, and the larger housing crisis.