

# PROMOTING RESILIENT OPERATIONS FOR TRANSFORMATIVE, EFFICIENT, AND COST-SAVING TRANSPORTATION (PROTECT) FORMULA PROGRAM

	Fast Act (extension)	Bipartisan Infrastructure Law (BIL)				
Fiscal year (FY)	2021	2022	2023	2024	2025	2026
Contract authority	---	\$1.40 B	\$1.43 B	\$1.46 B	\$1.49 B	\$1.52 B

**Note:** Except as indicated, all references in this document are to the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021).

## Program Purpose

The BIL establishes the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program to help make surface transportation more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters through support of planning activities, resilience improvements, community resilience and evacuation routes, and at-risk costal infrastructure.

## Statutory Citations

- § 11405; 23 U.S.C. 176(c)

## Funding Features

The PROTECT Program includes both formula funding distributed to States and competitive grants. This fact sheet describes the program’s formula funding (“PROTECT Formula Program”).

### Type of Budget Authority or Authorization of Appropriations

- Contract authority from the Highway Account of the Highway Trust Fund, subject to the overall Federal-aid obligation limitation.

### Apportionment of Funds

- As under the FAST Act, the BIL directs FHWA to apportion funding as a lump sum for each State then divide that total among apportioned programs.
- Each State’s PROTECT Formula Program apportionment is calculated based on a percentage specified in law. [23 U.S.C. 104(b)(8)] (See “Apportionment” fact sheet for a description of this calculation)

### Set-aside for Resilience-Related Planning

- Requires each State to use at least 2% of its PROTECT Formula Program funding each fiscal year for specified types of resilience-related planning activities, such as developing a resilience improvement plan; resilience planning, predesign, or design; technical capacity-building; or evacuation planning and preparation. [§ 11405; 23 U.S.C. 176(c)(2) and (d)(3)]

### Limitations

- Permits a State to use up to 40% of its PROTECT Formula Program funding to construct new capacity. [§ 11405; 23 U.S.C. 176(c)(3)(F)(i)]
- Permits a State to use up to 10% of its PROTECT Formula Program funding for development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities. [§ 11405; 23 U.S.C. 176(c)(3)(E)(i)(I) and (F)(ii)]

#### Transferability to Other Federal-aid Apportioned Programs

- A State may transfer up to 50% of PROTECT Formula funds made available each fiscal year to any other apportionment of the State, including the National Highway Performance Program, Surface Transportation Block Grant Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, National Highway Freight Program, and **[NEW]** Carbon Reduction Program. Conversely, subject to certain limitations, a State may transfer up to 50% of funds made available each fiscal year from each other apportionment of the State to the PROTECT Formula Program. [23 U.S.C. 126(a)] (See other program-specific fact sheets for additional details.)

#### **Federal Share**

- Generally, up to 80% [§ 11405; 23 U.S.C. 176(c)(3)(D)(i)]
- Non-Federal share may be reduced by—
  - 7 percentage points if the State developed a Resilience Improvement Plan and prioritized the project on that Resilience Improvement Plan; and
  - 3 percentage points if a State Resilience Improvement Plan developed in accordance with 23 U.S.C. 176(e) is incorporated into the metropolitan transportation plan under 23 U.S.C. 134 or the statewide long-range transportation plan under 23 U.S.C. 135, as applicable. [§ 11405; 23 U.S.C. 176(e)(1)(B)]
- A State may not receive a reduction in non-Federal share under 23 U.S.C. 176(e)(1) of more than 10 percentage points for any single project carried out with PROTECT Formula Program funds. [§ 11405; 23 U.S.C. 176 (e)(1)(B)(iii)(I)].
- A reduction in non-Federal share under 23 U.S.C. 176(e)(1) shall not reduce the non-Federal share of the costs of a project carried out with PROTECT Formula Program funds to an amount that is less than zero. [(§ 11405; 23 U.S.C. 176 (e)(1)(B)(iii)(II)].
- A State may use Federal funds (other than PROTECT Formula Program funds) to meet the non-Federal share for a project funded with PROTECT Formula Program funds. [§ 11405; 23 U.S.C. 176(c)(3)(D)(ii)]

#### **Eligible Facilities, Activities, and Costs**

##### Eligible Facilities

- A State may only use its PROTECT Formula Program funds for eligible activities and eligible costs (see below) associated with—
  - highway projects eligible under Title 23, U.S.C.;
  - public transportation facilities or services eligible under chapter 53 of title 49, U.S.C.; or
  - port facilities, including facilities that connect ports with other modes of transportation, improve the efficiency of evacuations and disaster relief, or aid transportation. [§ 11405; 23 U.S.C. 176(c)(3)(B)]

### Eligible Activities

- A State shall use its PROTECT Formula Program funds for—
  - **Planning Activities** limited to developing a Resilience Improvement Plan; Resilience planning, predesign, design, or the development of data tools to simulate transportation disruption scenarios, including vulnerability assessments; technical capacity building to facilitate the ability of the State to assess the vulnerabilities of its surface transportation assets and community response strategies under current conditions and a range of potential future conditions; or evacuation planning and preparation [§ 11405; 23 U.S.C. 176(c)(2) and 176(d)(3)];
  - **Resilience Improvements** to improve the ability of an existing surface transportation asset to withstand one or more elements of a weather event or natural disaster, or to increase the resilience of surface transportation infrastructure from the impacts of changing conditions, such as sea level rise, flooding, wildfires, extreme weather events, and other natural disasters [§ 11405; 23 U.S.C. 176(d)(4)(A)];
  - **Community Resilience and Evacuation Route activities** that strengthen and protect evacuation routes that are essential for providing and supporting evacuations caused by emergency events, including: resilience improvements if they will improve evacuation routes, and projects to ensure the ability of the evacuation route to provide safe passage during an evacuation and reduce the risk of damage to evacuation routes as a result of future emergency events [§ 11405; 23 U.S.C. 176(d)(4)(B)]; or
  - **At-Risk Coastal Infrastructure activities** to strengthen, stabilize, harden, elevate, relocate or otherwise enhance the resilience of highway and non-rail infrastructure, including: bridges, roads, pedestrian walkways, and bicycle lanes, and associated infrastructure, such as culverts and tide gates to protect highways that are subject to, or face increased long-term future risks of, a weather event, a natural disaster, or changing conditions, including coastal flooding, coastal erosion, wave action, storm surge, or sea level rise, in order to improve transportation and public safety and to reduce costs by avoiding larger future maintenance or rebuilding costs. [§ 11405; 23 U.S.C. 176(d)(4)(C)]

### Eligible Costs

- **Eligible Project Costs in General:** Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements. [§ 11405; 23 U.S.C. 176(c)(3)(E)(i)]
- **Eligible Planning Costs:** In the case of a planning activity described in 23 U.S.C. 176(d)(3) that is carried out by a State with PROTECT Formula Program funds, eligible costs may include development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, other preconstruction activities, and other activities consistent with carrying out the purposes of 23 U.S.C. 176(d)(3). [§ 11405; 23 U.S.C. 176(c)(3)(E)(ii)]

### System Resilience Elements

- A project carried out by a State with PROTECT Formula Program funds may include the use of natural infrastructure or the construction or modification of storm surge, flood protection, or aquatic

ecosystem restoration elements that are functionally connected to a transportation improvement.  
[§ 11405; 23 U.S.C. 176(c)(3)(C)]

## **Program Features**

This is a new program established under BIL.

### Projects in Base Floodplains

- For a project carried out in a base floodplain, requires the State to identify and disclose to the Secretary that base floodplain, and indicate whether the State plans to implement, for that area, any components of the risk mitigation plan under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165).  
[§ 11405; 23 U.S.C. 176(c)(3)(A)]

### Treatment of Projects

- Treats every project funded under the program as if it were located on a Federal-aid highway. This ensures applicability of Davis-Bacon wage requirements that apply to other projects on Federal-aid highways. [§ 11405; 23 U.S.C. 176(h)]

## **Additional Information and Assistance**

- FHWA can connect you with your local FHWA office and support you with technical assistance for planning, design, construction, preserving, and improving public roads and in the stewardship of Federal funds. For assistance, visit: [https://www.fhwa.dot.gov/bipartisan-infrastructure-law/technical\\_support.cfm](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/technical_support.cfm).
- For general assistance related to BIL, visit: [https://www.fhwa.dot.gov/bipartisan-infrastructure-law/technical\\_support.cfm](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/technical_support.cfm).