

# **Infrastructure Advocacy: What Is NASBP Doing to Make This Happen?**

NASBP Presenters:

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# The Pressing Need for Infrastructure Investment!



US infrastructure scored a C- (mediocre, requires attention) on **ASCE's** 2021 *Report Card for America's Infrastructure* (<https://infrastructurereportcard.org/>). This is actually an improvement from past years and takes the infrastructure assessment out of the usual D range (poor).

# The Pressing Need for Infrastructure Investment!

## US Infrastructure

- Investments needed in all categories: 18 categories, i.e., roads, bridges, wastewater, drinking water, airports, broadband, etc.
- Tremendous shortfall in funding to address deteriorating infrastructure.

*“The most recent analysis reveals that while we’ve made incremental immediate gains in some of the infrastructure categories, our long-term investment gap continues to grow. We’re still just paying about half of our infrastructure bill – and the total investment gap has gone from \$2.1 trillion over 10 years to nearly \$2.59 trillion over 10 years.”*

*- ASCE’s 2021 Report Card for America’s Infrastructure*

# Infrastructure Advocacy - Starts with Broad Coalition Building

## The Power of Partnership

Coalitions are necessary to increase issue visibility, to educate, to gain credibility, and to achieve legislative goals

- To pass federal legislation—(The INVEST ACT)
  - The **U.S. Chamber of Commerce, Labor, TCC, and CIPC** (major surety & construction associations working together on matters of mutual interests)
- To bring awareness of the need for funding infrastructure investment:
  - **TRIP**--collaborates w/key external stakeholders
- To educate/advance alternative delivery methods (P3s):
  - **AIAI**--serves as a resource for industry leaders/policy makers on P3 matters

# Passing Federal Legislation Is Difficult!

## Broad Support Needed

### **The Difficulty of Federal Bill Introduction and Passage**

- Finding the right bill sponsors – need for bi-partisan support
- PACs are important
- Congress passes only a tiny fraction of the bills introduced
  - Congress is increasingly polarized
  - Common for bills to be considered in multiple Congressional cycles
  - Takes time to educate
  - Fewer vehicles – omnibus bills
  - Even common-sense bi-partisan measures may not get passed in a given Congress

# Passing Federal Legislation Is Difficult!

## Broad Support Needed

### The Difficulty of Federal Bill Introduction and Passage

- Numbers at a glance:
  - 117<sup>th</sup> Congress — 8,850 bills (since 1/2021), enacted 36, rec'd vote 150 (2%),
  - 116<sup>th</sup> Congress —introduced over 16K bills, enacted 340 (2%), 740 rec'd vote (4%)
  - 115<sup>th</sup> Congress —introduced 13,500 bills, enacted 443 (3%), rec'd vote 860 (6%)

Source: <https://www.govtrack.us/congress/bills/statistics>

# Infrastructure Coalitions

## US Chamber of Commerce

### Top 10 Reasons Why the Infrastructure Investment and Jobs Act Is Beneficial to All Americans

1. Ensures the U.S. infrastructure remains competitive with China
2. Most fiscally responsible infrastructure package in at least a decade
3. Reforms the permitting process to cut government red tape
4. Leverages private-sector investment to build our infrastructure
5. Unlike other government spending, investment in infrastructure is not inflationary

# Infrastructure Coalitions Chamber's Top 10 (cont'd)

## US Chamber of Commerce

### Top 10 Reasons Why the Infrastructure Investment and Jobs Act Is Beneficial to All Americans

6. Will ensure all Americans – including rural Americans – can access high-speed internet
7. Ensures investment occurs in all corners of the country, not just big cities
8. Reduces wasteful spending by using excess COVID money for infrastructure
9. Is supported by a majority of Republican, Democrat, and Independent voters
10. Voting no on the bipartisan infrastructure bill only empowers the progressive agenda and makes tax increases more likely



# NASBP's Federal Advocacy Efforts Past-to-Present

## **What IFAs? - TIFIA, WIFIA, BIFIA**

- \* Proposed language for bond requirements when states/localities receive grants/loans under P3s projects dedicated to:
  - \* surface transportation, water, and aviation improvements
  - \* Water (WRDA) 2014, surface transportation (2018, 2020, 2021), airport improvement act (2018)

# Federal Advocacy Efforts Past-to-Present (cont'd)

## **2021 INVEST Act H.R.3684** (surface transportation bill)

- Senate passes INVEST Act 69-30
  - Includes language to require p/p bonds for TIFIA program and P3s —introduced as S. 638/H.R. 1641p/p bonds for TIFIA funds and P3s
  - Supported by broad coalition of, business, labor, and construction industry

# Federal Advocacy Efforts Past-to-Present (cont'd)

## Potential Showdown in Both Chambers

- INVEST Act (H.R. 3684) does not address progressive issues —i.e., climate change
  - Budget reconciliation (Res.14) Build Back Better Plan (human infrastructure) pay-fors—tax increases
  - Deadline Sept. 15
  - Budget Reconciliation & INVEST Act in tandem for passage
- Other pressing matters in Sept.:
  - Federal Budget—Sept. 30
  - Increase federal debt ceiling

# Federal Advocacy Efforts Past-to-Present (cont'd) Title 41 (Miller Act indexing)

**H.R. 2949** - exempts the Miller Act from indexing for inflation under Title 41

- Coalition supported (CIPC)
- Looking for bi-partisan support
- Next steps:
  - Senate standalone bill
  - NDAA Amendment
  - CIPC letter to SASC/HASC

# Federal Advocacy Efforts Past-to-Present (cont'd) Broadband

## **Broadband—Regulatory and Legislative Efforts**

- Performance bonds as alternative to LOCs, on FCC, RUS (USDA) broadband auctions (regs)
- P&P bonds for broadband infrastructure/construction projects (seek legislation).
- Advocacy/coalition efforts:
  - NASBP/NSPS (surveyors/mappers)
  - Broadband trade letters to FCC—liquidity/LOC issue for small ISPs
  - Regulatory Comments
  - Meetings

# Federal Advocacy Efforts

## Legislative Fly-In

### Legislative Fly-in

- Connects federally-elected representatives with industry constituents as advocates
- Critical to advancing industry legislative goals, such as bond requirements on infrastructure investments
- Held jointly with SFAA
- Scheduled for Thursday, **March 3, 2022**

# Questions?

## **Exempt the Miller Act from periodic threshold increases**

### **The Federal Miller Act (40 U.S.C. §§ 3131-3134)—The protection for our nation's infrastructure projects**

For nearly a hundred years, the federal government has statutorily required general contractors to furnish surety bonds on federal contracts. The Miller Act currently requires all general contractors on federal construction projects over \$150,000 to furnish surety bonds to protect the government's use of taxpayer funds (performance bonds) and to ensure payments to subcontractors, and suppliers (payment bonds). Because subcontractors and suppliers cannot lien public property, the Miller Act payment bond provides their only source of payment protection.

Furthermore, subcontractors and suppliers often are small businesses on federal projects, and the risk of non-payment can be catastrophic to their businesses. The performance bond protects federal taxpayers by ensuring completion of the construction contract for the agreed contract price. In the event of a default by the general contractor, the surety steps in to complete the construction contract or hires a new contractor to complete the contract, saving taxpayers and the public purse from the considerable costs of re-letting the project and stopping and restarting. If this threshold increases, more small business subcontractors and suppliers on public projects will be put at risk of nonpayment if a general contractor cannot fulfil its contractual obligations.

### **Inflation adjustments of acquisition-related dollar thresholds (41 USC §1908)**

Unfortunately, Congress swept up the Miller Act bond protections in a provision included in the Fiscal Year 2005 National Defense Authorization Act (NDAA), which called for inflationary indexing of all federal acquisition-related dollar thresholds in accordance with 41 USC §1908. As a result, the Miller Act bond protections are treated as the same as procurement thresholds and ignore the decades-old federal legal precedent that the Miller Act is a remedial statute protecting the rights of the government and payments to subcontractors and suppliers on federal projects. Interestingly, in the same legislation, Congress recognized that certain protections should not be subject to this inflationary adjustment scheme. Specifically, Davis Bacon Act protections were excluded from periodic inflationary adjustments to protect the payment of wages to laborers on federal projects.

The same basis that provides the exception for the Davis Bacon Act from periodic inflationary adjustments, preserving appropriate payments, should be applied to the Miller Act bond protections. Regularly increasing the Miller Act bond threshold exposes smaller businesses, working as subcontractors and suppliers, to loss of payment protections on federal construction projects. Further, U.S. taxpayers should not have their tax dollars utilized for government construction projects placed at risk by the absence of performance bonds due to a rote inflationary adjustment.

### **Impact of not exempting the Miller Act from Title 41 inflation adjustments**

The Miller Act was enacted as a protective remedial statute, but any increase in the contract price threshold exposes workers, suppliers, and taxpayer dollars to unnecessary risk. For each increase of the Miller Act bond threshold by a \$50,000 increment, **it is estimated by the Surety & Fidelity Association of America that approximately 1,700 federal construction contracts per year worth an estimated \$300M dollars will be exposed to unnecessary risk. Please think about the numbers of subcontractors and suppliers, many of which will be classified as small businesses, which will not have payment protections on such projects.**



### **The Solution**

Congresswoman Nydia Velazquez (D-NY) and Congressman Byron Donalds (R-FL) have introduced, H.R. 2949 that provides a bipartisan, commonsense solution to fix this problem. This legislation would make clear that the Miller Act would not be subject to indexing under Title 41.

### **Benefits of this solution**

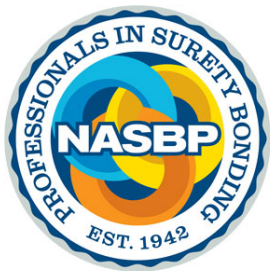
- **Surety Bonds offer protections and benefits far beyond their nominal costs.** Bonding typically only adds 1% to 3% to projects costs and provides 200% performance and payment coverage protection. Further, since surety companies make sure only qualified general contractors bid on federal construction contracts, the added costs deliver benefits in terms of risk management and the quality of contractors that are attracted to compete for federal construction projects.
- In the event a general contractor is unable to complete its obligations to both subcontractors and the public owner, a surety company is able to step in to complete the contract and to ensure that subcontractors and suppliers are paid.

### ***Organizations who support H.R. 2949 include Members of the Construction Industry Procurement Coalition (CIPC) which include the following:***

American Council of Engineering Companies  
Associated General Contractors of America  
American Society of Civil Engineers  
American Subcontractors Association  
Design-Build Institute of America  
Independent Electrical Contractors  
International Institute of Building Enclosure Consultants  
National Association of Surety Bond Producers  
National Electrical Contractors Association  
National Society of Professional Surveyors  
Sheet Metal & Air Conditioning Contractors National Association  
The Surety & Fidelity Association of America  
U.S. Geospatial Executives Organization  
Women Construction Owners & Executives

### ***Other Supporting Organizations***

American Property Casualty Insurance Association (APCIA)



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**FOR IMMEDIATE RELEASE: MARCH 10, 2021**

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**NASBP STRONGLY SUPPORTS BILL PROVIDING  
ESSENTIAL PROTECTIONS ON ALL FEDERALLY FINANCED  
PROJECTS RECEIVING TIFIA FUNDS**

**Bethesda, MD**—The [National Association of Surety Bond Producers](http://www.nasbp.org) (NASBP) wishes to express its appreciation to U.S. Senator Chris Van Hollen (D-MD), U.S. Senator Mike Rounds (R-SD), U.S. Congressman Stephen Lynch (D-MA) and U.S. Congressman Troy Balderson (R-OH) for the introduction of the “Promoting Infrastructure by Protecting Our Subcontractors and Taxpayers Act.” This bipartisan, bicameral legislation would direct the U.S. Department of Transportation (DOT) to ensure public-private partnership (P3) projects using Transportation Infrastructure Finance Innovation Act (TIFIA) financing have appropriate payment and performance security in place, making them sound federal investments.

TIFIA loans are one of the means by which P3 projects can be financed and undertaken in the U.S. This important federal program needs to make sure protections are in place in the form of performance and payment bonds, so taxpayer dollars are wisely spent and businesses and suppliers are assured payment. Infrastructure is absolutely a bipartisan issue.

This bill is a vital safeguard for precious federal funds needed to build infrastructure in the U.S. and to ensure those that are supplying labor and materials have payment remedies in place.

P3 projects have increased in popularity over the years, however the lack of clarity for requiring payment and performance protections on P3 projects can force taxpayers to absorb additional costs of rebidding a project, and subcontractors and workers are often left unpaid for extended periods of time if the contractor defaults. By ensuring a bond requirement, P3 projects will offer the same payment and performance protections that have been in place on public infrastructure projects, protecting our nation’s construction industry and taxpayers alike.

--more--

"The [Act] is critical, bipartisan legislation to ensure that federal funding for infrastructure is protected through guarantees of performance and payment," said Mark McCallum, Chief Executive Officer of NASBP. "Such protections make sure that these vital and complex projects can be undertaken and completed by qualified construction firms, without undue risk to taxpayer funds and the businesses who perform as subcontractors and suppliers." "The NASBP strongly urges support for the [Act] from all who seek to improve and advance the Nation's infrastructure and extends its appreciation to Senator Chris Van Hollen for his insightful leadership on this issue," he said.

For more information, see the [press release](#) issued by Senator Van Hollen's office and a [NASBP video describing how surety bonds protect](#) taxpayer funds and suppliers and service providers that work on infrastructure projects.

*Founded in 1942, the National Association of Surety Bond Producers (NASBP) is the association of and resource for surety bond producers and allied professionals. NASBP members specialize in providing surety bonds for construction contracts and other purposes to companies and individuals needing the assurance offered by surety bonds.*

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## For Immediate Release

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### **NASBP & SFAA Strongly Support Miller Act Indexing Exemption**

*Without Exemption, Thousands of Workers and Subcontractors Will Be Put at Risk*

**May 4, 2021 (WASHINGTON, DC)** – [The Surety & Fidelity Association of America \(SFAA\)](#) and the [National Association of Surety Bond Producers \(NASBP\)](#) commend Chairwoman Nydia Velazquez (D-NY) and Congressman Byron Donalds (R-FL) for the introduction of H.R. 2949. This legislation will ensure essential payment protections for subcontractors, suppliers, and workers and ensure performance protections for taxpayers will remain in place on federal construction contracts of \$150,000 and more. The bill will exempt the Miller Act bond threshold from periodic and arbitrary increases currently required under a broad indexing law.

“Bonding federal infrastructure protects taxpayers’ dollars, ensures project completion, protects local small businesses and workers, and promotes economic growth,” said Lee Covington, president and CEO of the SFAA. “The Miller Act provides essential remedial protections for many small businesses which furnish labor and materials on public work. If the bond threshold is raised, thousands of federal projects will no longer be protected by payment and performance bonds, leaving downstream parties exposed to significant risk of nonpayment if the contractor fails to pay them or goes out of business,” continued Covington.

If the federal bond threshold increases from \$150,000 to \$200,000, the result is an estimated 1,700 unbonded federal contracts annually worth approximately \$300M worth of taxpayer dollars potentially exposed to unprotected loss. It is for these policy reasons that NASBP, SFAA, and the 16 association members of the Construction Industry Procurement Coalition strongly support H.R. 2949.

“Congress recognized that certain protections should not be subject to periodic inflationary adjustments as required under Title 41, and this same statutory exclusion should also apply to the essential protections of the Miller Act,” stated Mark McCallum, NASBP CEO. “It’s important to understand the only protection certain subcontractors and suppliers have on federal construction contracts are payment bonds, since no liens can be placed on public property, and periodic increases to the Miller Act threshold will subject more subcontractors and suppliers to risk of non-payment, which can cause dire if not catastrophic impacts to their businesses,” stressed McCallum.

For over 80 years, the federal Miller Act has protected taxpayers against risk of loss by requiring payment and performance bonds on federal construction contracts. NASBP and SFAA look forward to working with Congress, on a bipartisan basis, for the passage of this essential bill.

###

***The Surety & Fidelity Association of America (SFAA)** is a trade association of more than 425 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. [www.surety.org](http://www.surety.org)*

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### **SFAA and NASBP to Hold Virtual Joint Legislative “Fly-In”** *Surety Industry to Advocate on Capitol Hill for Legislative Priorities*

**March 25, 2021 (WASHINGTON, DC)** – [The Surety & Fidelity Association of America \(SFAA\)](#) and the [National Association of Surety Bond Producers \(NASBP\)](#) will hold their first-ever Virtual Joint Legislative “Fly-In” on Thursday, March 25, 2021. The SFAA and NASBP Joint Legislative Fly-In will enable surety professionals from across the country to educate members of Congress and staff about the value of construction surety bonds and advocate for their legislative priorities.

“The virtual meetings will allow our members to show their strong support for new legislation introduced by Senator Chris Van Hollen (D-MD), Senator Mike Rounds (R-SD), Congressman Stephen Lynch (D-MA) and Congressman Troy Balderson (R-OH) to clarify the bonding requirements under the Transportation Infrastructure Finance and Innovation Act (TIFIA), as well as legislation continuing bonding protections at current levels for federal projects,” said Dalton DeFendis, Director of Federal Affairs for SFAA.

Larry LeClair, Director of Government Relations of NASBP added, “With delivering an infrastructure package a key legislative goal of the new White House and of Congress, having surety professionals explain the critical role surety bonding requirements play in protecting federal funding resources and in delivering quality construction of infrastructure projects has never been more timely or important.” LeClair emphasized, “The virtual fly-in will connect congressional offices with subject matter experts on surety to help them make key policy decisions as they formulate legislative solutions to address the need for transportation, broadband, and other types of infrastructure.”

In over 150 meetings on Capitol Hill, construction bonding experts will meet with policy makers and their staff to educate them on the significant role surety bonds play in advancing public infrastructure projects. These vital protections on construction projects for public entities include: protecting taxpayers’ dollars, ensuring project completion, protecting local small business contractors and workers, and promoting economic growth. Additional information on the 2021 SFAA and NASBP Virtual Joint Legislative Fly-In can be found [here](#).

###

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August 3, 2021

Dear Senators:

The Infrastructure Investment and Jobs Act (IIJA) represents an opportunity to provide meaningful economic and quality of life enhancements to communities across the country and to build for the future. The investments made in the Senate package would facilitate long overdue repairs and improvements to our roads, bridges, rail, and public transportation systems, as well as investing in airports, ports, broadband, and water systems.

The undersigned organizations encourage all senators to support the legislation.

The bipartisan IIJA would have far-reaching benefits. The investments would create new jobs through project construction in the short term, and provide improved safety, mobility, and quality of life for decades to come. Taken together, the range of improved outcomes for all residents and businesses would help ensure a sound recovery from the COVID-19 pandemic.

By including a five-year reauthorization of federal highway, public transportation, and passenger rail programs, the agreement would also ensure states and localities have much-needed funding and policy certainty to proceed with planned projects. These programs are currently operating under an extension set to expire Sept. 30, underscoring the need for prompt Senate action.

We are grateful for this generational investment in transportation infrastructure and ask for your support on all procedural votes and final passage of the IIJA when it reaches the Senate floor.

Sincerely,

American Road & Transportation Builders Association  
American Association of State Highway and Transportation Officials  
U.S. Chamber of Commerce  
Agricultural Retailers Association  
Airports Council International--North America  
American Apparel & Footwear Association  
American Concrete Pavement Association  
American Concrete Pipe Association  
American Concrete Pumping Association



American Council for Capital Formation  
American Council of Engineering Companies  
American Foundry Society  
American Highway Users Alliance  
American Institute of Steel Construction  
American Iron and Steel Institute  
American Public Transportation Association  
American Public Works Association  
American Rental Association  
American Securities Association  
American Society of Civil Engineers  
American Society of Concrete Contractors  
American Society of Landscape Architects  
American Subcontractors Association  
American Traffic Safety Services Association  
American Trucking Associations  
Associated Equipment Distributors  
Associated General Contractors of America  
Associated Wire Rope Fabricators  
Association for the Improvement of American Infrastructure  
Association of American Railroads  
Association of Equipment Manufacturers  
Auto Care Association  
Building America's Future  
Coalition for America's Gateways & Trade Corridors  
Community Transportation Association of America  
Construction & Demolition Recycling Association  
Corn Refiners Association  
Design-Build Institute of America  
FP2, formerly the Foundation for Pavement Preservation  
Independent Lubricant Manufacturers Association  
Industrial Minerals Association – North America  
Institute of Makers of Explosives  
Institute of Transportation Engineers  
International Society of Explosive Engineers  
International Union of Operating Engineers  
Laborers International Union of North America  
Motor & Equipment Manufacturers Association  
National Asphalt Pavement Association  
National Association of County Engineers  
National Association of Home Builders  
National Association of Remodeling Industry  
National Association of Surety Bond Producers

National Association of Trailer Manufacturers  
National Association of Wholesaler-Distributors  
National Electrical Contractors Association  
National Independent Automobile Dealers Association  
National Lime Association  
National Ready Mixed Concrete Association  
National Retail Federation  
National Society of Professional Surveyors  
National Steel Bridge Alliance  
National Stone, Sand and Gravel Association  
National Waste & Recycling Association  
North American Association of Food Equipment Manufacturers  
Portland Cement Association  
Precast/Prestressed Concrete Institute  
Railway Supply Institute  
Retail Industry Leaders Association  
Sheet Metal and Air Conditioning Contractors National Association  
Specialized Carriers & Rigging Association  
State Business Executives  
Steel Manufacturers Association  
Subsurface Utility Engineering Association  
The Surety & Fidelity Association of America  
Tire Industry Association  
Transport Workers Union of America  
Transportation Intermediaries Association  
Travel Goods Association  
U.S. Geospatial Executives Organization  
U.S. Travel Association  
United Brotherhood of Carpenters and Joiners of America  
United Motorcoach Association