

Client Alert

Infrastructure Industry Initiative Practice Group

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Rebuilding Infrastructure in America *Infrastructure Update*

Recently, we described the announcement of President Trump's \$1.5 trillion infrastructure plan (the "Plan"). Today, we report on what has developed since the ambitious proposal was unveiled.

Current State-of-Play

Last week in Richfield, OH, before a large crowd of union builders, President Trump heralded his recently announced infrastructure plan. While shedding no new light on the details, he doubled-down on his commitment to make America great again by rebuilding its roads and bridges and putting Americans to work. While doing so, however, he acknowledged the difficult tasks ahead. He hinted that it was unlikely there would be congressional action prior to 2019 when the next Congress convenes. He blamed the delay on congressional Democrats who he signaled were determined to block his plan.

The President correctly noted that his \$1.5 trillion infrastructure plan will not be addressed by Congress in 2018. Several factors will drive that outcome. First and foremost, there is very little agreement among members of Congress for the plan as outlined in February. The President's initiative calls for a total of \$1.3 trillion in spending by state and local governments and the private sector leveraged by \$200 billion from the federal government. Many members of Congress from both sides of the aisle representing less wealthy communities see this as exacting an insurmountable burden on them in order to participate in the program. Moreover, Democrats prefer to see most of the spending coming from the federal government, more typical of traditional infrastructure spending—think "New Deal." Second, there is a dearth of legislative days in this session of Congress. While it is only the beginning of April, Congress will not be in legislative session many days this year because of the early adjournment associated with the November elections. About all Congress can be expected to do the remainder of this year is to enact appropriation bills. Depending on the outcome of the elections, there is always the possibility of a Lame Duck session of Congress during which anything is possible as members of Congress are temporarily freed from political imperatives.

Beyond spending, the President's plan calls for a reduction in regulations and a streamlining of the permitting process. These two different but complementary goals can, in and of themselves, expedite infrastructure projects that are already in the early stages of funding.

Early in his administration, the President unveiled a plan to repeal two regulations for every new one that is enacted. By and large, not many rules have been repealed under this directive due to the fact that the President's Administration has not been issuing new regulations. Most recently, however, the EPA announced the repeal of Obama-era fuel standards for automobiles and light trucks. There also are plans to streamline permitting processes which can either be done congressionally or by executive departments and agencies.

Whatever happens in Congress, it will be undoubtedly through a piecemeal process using the authorizing process, such as the FAA and Water Resources Development Act reauthorizations, and the appropriations process, such as the extra \$10 billion that was included for infrastructure in the omnibus spending bill enacted last month.

Even though not much can be expected until 2019, infrastructure will continue to be a hot topic. On the positive side, the sixth annual Infrastructure Week is upon us during which infrastructure projects will be promoted across the nation with participation from unions, developers and civic organizations. Tea-leaf readers will look to see what impact the resignation of the Administration's lead staffer on infrastructure, D.J. Gribben, will have in the short term.

Ironically, if as some suggest, Democrats win control of one or both Houses of Congress in November, a version of the President's plan could be advanced. The new Democratic congressional leadership would be happy to join with the President in advocating for aggressively pursuing new infrastructure projects and related job creation. They will insist, however, on more direct federal government spending to be combined with the President's public private partnership proposals. And they will strongly resist attempts to cut regulations that they believe are essential to protecting the environment. Should each side be willing to compromise, infrastructure would get a significant boost by having bipartisan support on Capitol Hill and could be underway in 2019. Going in to his 2020 re-election campaign, the President would receive a great credit for employing the Art of the Deal and scoring another victory on top of 2017's tax reform.

Upcoming Hearings and Events

April 11, 9:30 a.m.: The Department of Transportation and the Federal Aviation Administration hold a meeting of the Research, Engineering & Development Advisory Committee to receive guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy; 800 Independence Avenue SW, Washington, D.C.

May 14-21: Infrastructure Week, "#TimeToBuild": <http://infrastructureweek.org>

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