Rebuilding Infrastructure in America: The White House Legislative Outline

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This article summarizes the legislative goals for rebuilding U.S. infrastructure.

On February 12, 2018, The White House released President Donald J. Trump's legislative goals for rebuilding U.S. infrastructure.[1]

General Overview

The White House established six principles:

1) Stimulate Infrastructure Investment: $200 billion of federal funds to spur $1.5 trillion of investment through state, local, tribal, and private partnerships.

2) Invest in Rural America: Invest $50 billion of the $200 billion in rural America.

3) Increase State and Local Authority: Give states and localities more discretion in prioritizing and making investment decisions.

4) Eliminate Regulatory Barriers: Modify or eliminate regulations with an end-goal of expediting and expanding infrastructure investment.

5) Streamline Permitting: Modify the permitting process with the same end-goal of expediting and expanding infrastructure investment.

6) Investment in People: Provide a platform to train and prepare American workers for infrastructure-related opportunities.

The Legislative Goals presented to Congress are divided into four parts:

I. Funding and Financing Infrastructure Improvements;

II. Additional Provisions for Infrastructure Improvements;

III. Infrastructure Permitting Improvement;

IV. Workforce Development.

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Part I (Funding and Financing Infrastructure Improvements) establishes four incentive programs for investing federal funds.

- *Infrastructure Incentives Program*: $100 billion to be awarded by the Department of Transportation, the United States Army Corps of Engineers and the Environmental Protection Agency on a competitive basis to fund up to 20 percent of selected projects. The remaining 80 percent of the funding would come from other sources.
    - Projects are likely to involve surface transportation and airports, passenger rail, ports and waterways, flood control, water supply, hydropower, water resources, drinking water facilities, wastewater facilities, storm water facilities, and the cleanup of Brownfields and Superfund sites.
- *Rural Infrastructure Program*: $50 billion to be awarded to invest in infrastructure in areas with populations of 50,000 or less. States and Tribes would receive funds, with 80 percent of the funds allocated by block grant (by formula), and the remaining 20 percent reserved for specific projects grants selected on a competitive basis.
    - Projects are likely to involve transportation, broadband, water, waste, power, electric, and water resources.
- *Transformative Project Program*: $20 billion to be awarded by the Department of Commerce to fund "ambitious, exploratory, and ground-breaking" projects that fundamentally transform the way infrastructure is delivered and operated. The program would support "significant positive impact" projects that should become commercially viable but where then-current risks have deterred private investment. The program encourages public-private collaboration to provide additional resources for these projects. The program would fund 30 percent, 50 percent or 80 percent of the eligible costs, depending on the life cycle stage of the project.
    - Projects are likely to involve transportation, water, energy, commercial space, and broadband.
- *Infrastructure Financing Program*: $20 billion to increase the capacity of existing federal credit programs (including TIFIA, RRIF, WIFIA, and RUS) and broaden the use of Private Activity Bonds ("PABs").

The Legislative Outline details other programs focused on federal property and related infrastructure:

- *Interior Maintenance Fund*: A new fund where the Department of Interior could use certain revenues derived from expanded energy development on public lands for public lands infrastructure projects.
- *Federal Real Property Disposition Modifications*: New options to streamline how the federal government deals with, and disposes of, its real property assets; in particular to allow asset sales proceeds to be retained and re-invested in the real property needs of the federal agency that is selling the asset.
- *Federal Capital Financing Fund*: A new

funding mechanism for federal agencies, similar to a capital budget, where the federal government could use non-operating budget funds to acquire real property, thus being more efficient with federal dollars and relying less on year to year leases and other more expensive funding mechanics.

Part II (Additional Provisions for Infrastructure Improvements) addresses four categories of infrastructure:

I. *Transportation* (Highways, Transit, Rail and Airports)

II. *Water Infrastructure* (Water Programs, Inland Waterways, Water Infrastructure Resources)

III. *Veterans Affairs* (Real Property)

IV. *Land Revitalization* (Brownfield/Superfund Reform)

Specific recommendations are detailed for enhancing each infrastructure category, including programs for financings, generating new revenues, streamlining processes, increasing efficiency, and expanding the reach of existing programs.

Part III (Infrastructure Permitting Improvement) focuses on the roles of the federal government and state and local governments in delivering projects in a less costly and more time-efficient manner. It details how states and localities will control more decision-making, and authorizes pilot programs. It addresses judicial reform in connection with infrastructure projects.

Proposed regulatory reforms include creating a "One Agency, One Decision" environmental review structure, narrowing and refining the requirements of the National Environmental Policy Act, and eliminating redundancies in the Clean Water Act, and other federal laws, rules, and regulations.

Part IV (Workforce Development) identifies specific ways for the federal government to afford U.S. workers with educational opportunities and training for skills that the infrastructure projects will require, and provides funding access.

Insight

The goals are ambitious and broad. If implemented, virtually every aspect of U.S. business would be impacted, with a particular focus on the transportation, energy, water, utility, communications, and social infrastructure sectors.

The goals are just that — goals. Given the recent enactment of tax reform and its related impact on the deficit, and the many as yet unknown details of this plan, there is a good bit to accomplish before the goals become reality.

Implementation would rely heavily on states, the private sector, and private funding to leverage federal investments. This presents significant opportunities for the private sector, opening the door to new types of partnership structures.

The permitting process would be substantially streamlined, making private investments more attractive and feasible.

Regulatory regimes and processes would have to be reshaped, which is a challenge to which the Trump Executive Branch agencies and departments likely will rise enthusiastically. But this process will take time and undoubt-

edly be met with opposition and litigation from environmental and other groups.

While media and commentators have focused on the prospects of an infrastructure bill being passed in 2018, it is best to focus on the near-term impact of the goals.

Policy details and the implementation mechanics are being developed now. The regulatory and practical implications, given the involvement of various federal agencies, are starting to take shape — including the identifying of potential unintended consequences.

Business strategies should be developed around those policies, and the potential outcomes and opportunities. The time is ripe for early influencers to maximize beneficial outcomes.

NOTE:

[1]https://www.whitehouse.gov/briefings-statements/building-stronger-america-president-donald-j-trumps-american-infrastructure-initiative/.