**FEROX CLIENT UPDATE: INFRASTRUCTURE, HOPE OR HYPE?**

At the 2018 State of the Union address, President Trump promised his Administration would deliver a mind-boggling $1.5 trillion plan to "repair our crumbling infrastructure." The promise originates in the heady days of the 2016 election, when candidate Trump told reporters he would "at least double" his opponent Hillary Clinton's plan. Congress' cool reaction to the plan, however, combined with their own foot-dragging and a looming mid-term election, leaves the timeline and format of an infrastructure debate unclear. We break down the basics of the current debate, and where action may go off the rails.

## How is infrastructure funded now?

The Trump Administration has claimed that state and local governments have an "unhealthy" dependence on federal infrastructure funding. States and locals, in fact, put up about 76% of such funding. Federal funding often comes with matching requirements and similar provisions to ensure state and local governments contribute equitably. A notable exception is interstate highways and bridges – on these projects, the federal government covers 80%.

The Highway Trust Fund (HTF) is a key source of federal funding for highways, bridges, transit projects, and even alternatives like bike paths. The HTF is generally divided by a formula to states, then states divvy the funds among eligible local governments and projects. The HTF is funded instead by the federal gas tax of 18 cents per gallon. The gas tax hasn't changed since 1993, without accounting for inflation or increasing fuel efficiency. Congress has the chance to reauthorize the HTF every five years (most recently in 2015) but has always opted out of raising the gas tax. This has left Congress struggling to keeping the HTF afloat, let alone embark on a major new infrastructure initiative.

Other transportation and infrastructure funding comes from discretionary appropriations passed each year by Congress. The popular TIGER multimodal grant, for example, is funded through annual appropriations, as are Army Corps of Engineers waterway projects. Other types of infrastructure, such as rural development projects funded through the U.S. Department of Agriculture, and public housing stock maintained by the U.S. Department of Housing and Urban Development (HUD) are also funded through appropriations.

## What's in the Trump plan?

$1.5 trillion is a head-spinning figure – it's the entire federal student debt load, twice our annual defense budget, or twice the cost of the 2010 stimulus package. Trump's campaign promised to "spur" a $1 trillion investment in his first 100 days in office. But then Congress, state and local officials, and businesses asked the questions still plaguing us today: where's the money coming from? Who picks projects to fund, and what's the criteria? What's going to happen to existing programs?

The Administration offered few answers until last May, when it asked in its FY 2018 budget proposal for $200 billion for its still-unwritten infrastructure plan, but also to slash existing transit, waterways, rail, and aviation programs. The proposal offered no plan for maintaining the HTF. This raised bipartisan concerns that the Trump Administration planned to withdraw from its traditional funding role in favor of "devolution," leaving already cash-strapped states and local communities to find billions in their proverbial couch cushions.

On February 12, the White House finally delivered an infrastructure "legislative outline." The 55-page plan proposes to generate $1.5 trillion in private investment from a $200 billion in dedicated federal spending over ten years:

- $100 billion for state and local infrastructure incentive grants, funding a maximum of 20% of a new project. Applicants' ability to find non-federal revenue will be a major criterion.
- $50 billion for rural projects, including $40 billion divided between governors to use at their discretion, plus another $10 billion as block grants to states.
- $20 billion to expand existing credit programs like TIFIA, WIFIA, and private activity bonds (PABs). TIFIA would be expanded to airport, and WIFIA would be expanded to flood mitigation, water supply, and acquisitions. PABs' issuance caps would be eliminated, and PABs could support more types of projects, such as rural broadband.
- $20 billion for "transformative projects" that are commercially viable but too risky to attract private investors. This grant could cover as much as 80% of a project. Eligible projects extend beyond transportation to telecom, space, energy, and water.
- $10 billion for overhauling its federal infrastructure, including privatizing federal property.

The Administration further proposed to streamline the permitting process by implementing a "one agency, one decision" policy to eliminate duplicative agency reviews. The plan would also delegate select responsibilities, including right-of-way determinations, to the states. The plan requires permitting decisions within 24 months. The plan would propose the environmental review process by delegating more authorities to the states and waiving reviews for projects with a *de minimis* federal share.

The plan raised several concerns. The Administration once again offset this new spending with cuts to existing programs, which Congress has already rejected. Elsewhere, they plan is vague on key details, such as how to ensure projects benefit the public rather than private investors, how to hold states accountable for the future success of projects, and exactly what types of infrastructure the plan would support. Congress must now begin the complicated process of sorting out the details.

### How will we pay for this?

The Trump Administration insists that its permitting and environmental review reforms will attract hundreds of billions for P3 projects across the country, but the University of Pennsylvania recently estimated the plan would yield far less. Congress, state, and local governments are similarly skeptical that private investors will flock to invest in projects in rural or low-income areas. Without realistic budget cuts or a reliable stream of new private money, Congress is left with one viable option.

Bipartisan support briefly settled on raising the gas tax for the first time in 25 years to generate the necessary funding. President Trump himself told lawmakers he supported more than *doubling* the current tax to 43 cents a gallon on February 14. The leaders of the House Transportation and Infrastructure Committee on March 7 held a hearing showcasing bipartisan support for a similar gas tax increase, featuring nationwide business groups, AASHTO, and a left-leaning think tank. The U.S.

Chamber of Commerce argued there that raising the tax could generate $375 billion over ten years, almost double the Trump Administration wants to spend.

Bipartisan cooperation and practical solutions, at last? House Speaker Paul Ryan (R-WI) discarded the gas tax idea, arguing it would diminish the GOP's victory in passing a large tax cut in 2017. Ryan offered no alternatives, so Congress is back at square one. Without the gas tax, Congress could attempt a patchwork of private investment as well as privatization of public assets, tolling, and vehicle-miles travelled (VMT) fees to replace the lost gas tax. It's unclear if they can stitch together enough funding to execute the major investment President Trump wants.

**When can we expect action?**

After more than a year of waiting, state and local governments, businesses, and the public are eager for action. Speaker Ryan on March 7 announced Congress would move forward with an "infrastructure" plan, starting with reauthorization of the Federal Aviation Administration (FAA) and the Water Resources Development Act (WRDA) authorizing Army Corps of Engineers projects. Speaker Ryan called these "down payments" on an infrastructure plan that would be separated into five or six bills over the summer. On closer inspection, this claim is questionable. Congress regularly reauthorizes both the FAA and WRDA and would do so even without an infrastructure initiative. Ryan's plan is not the new commitment President Trump promised or stakeholders hoped for. Ryan briefly mentioned future bills on major new priorities like highways, but the plan remains vague, and therefore changeable.

So, is there still hope for a major investment as President Trump envisioned? A long road's ahead:

- Major components still need to be fleshed out. This will require consultation with multiple committees and federal agencies, along with affected state and local governments and business. The Administration has sent mixed signals about what it will accept in a plan.
- Without dire consequences like a shutdown or debt default to motivate action, Congress may not focus on infrastructure. Similarly, Congress faces a full slate of must-do legislation before it can turn to infrastructure. Senate Majority Whip John Cornyn (R-TX) said in early March Congress "may not have time" for infrastructure in 2018.
- Congress' procrastination will worsen as the 2018 midterm elections approach. House T&I Chairman Bill Shuster (R-PA), acknowledging this, suggested Congress could pass infrastructure in the post-election "lame duck" session, as Congress drops political posturing and clears its to-do list for the coming new year.
- If Congress goes long enough without action on infrastructure, leaders may opt to roll the idea into the next HTF reauthorization due in 2020.

The need for substantive infrastructure investment is undeniable and only growing. Frustration is building as stakeholders realize endless roundtables, hearings, and discussions of "skin in the game" bring us no closer to action. Branding routine legislation "infrastructure" will not fill potholes, build bridges, or expand broadband. Unless Congress and the White House commit to a realistic funding mechanism for infrastructure, the cash infusion President Trump promised will remain a fantasy.

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