March 2, 2017

On Tuesday, President Trump addressed a joint session of Congress and laid out his vision and priorities for the country. He mentioned one of his longest standing commitments – a $1 trillion infrastructure plan, but provided no additional details on specifics, funding, or timing other than to say that his plan would include both public and private funding.

Below is the extent of his comments on infrastructure:

> "Another Republican President, Dwight D. Eisenhower, initiated the last truly great national infrastructure program - the building of the interstate highway system. The time has come for a new program of national rebuilding. America has spent approximately six trillion dollars in the Middle East, all this while our infrastructure at home is crumbling. With this six trillion dollars we could have rebuilt our country - twice. And maybe even three times if we had people who had the ability to negotiate.
>
> To launch our national rebuilding, I will be asking the Congress to approve legislation that produces a $1 trillion investment in the infrastructure of the United States -- financed through both public and private capital - creating millions of new jobs.
>
> This effort will be guided by two core principles: Buy American, and Hire American."
>
> At the end of speech, he added, "Crumbling infrastructure will be replaced with new roads, bridges, tunnels, airports and railways, gleaming across our very, very beautiful land."

Here is a link to the statement on infrastructure which the White House released in conjunction with the address to Congress. It primarily addresses pipelines.

President Trump's mention of both public and private funding in his speech to Congress is particularly noteworthy because of concerns by industry stakeholders and many Members of Congress (especially those from rural areas) that the infrastructure plan may depend heavily or even exclusively on private financing in the form of tax credits for investors or P3 projects, rather than on long-term, sustainable federal funding. In early February, several hundred industry groups, including various state chapters, sent a letter to President Trump urging him to "provide real revenue for the Highway Trust Fund that will help the users and beneficiaries of America's transportation and freight network. Private financing, while important and needed, cannot replace the role of public funding and federal leadership." The letter was organized by the US Chamber of Commerce and the National Association of Manufacturers (NAM).

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The biggest question about the Administration's (and anyone else's) infrastructure plan is how to pay for it. The various options – a federal gas tax increase, incentivizing P3s, a national infrastructure bank, tax credits for investors, etc., will need to be addressed as part of another of the Administration's top priorities – tax reform. Yesterday, the Treasury Department announced it intends to work with Congress to enact a tax reform bill by the August recess – a very ambitious goal.

After the initial, post-election sense of optimism that one of President Trump's immediate priorities would be a massive infrastructure program, a dose of reality has set in as many of the Administration's early initiatives have been overtaken by events and undermined by controversy. The new Administration is quickly learning, as most new administrations do, that issues such as tax and regulatory reform, immigration policy, and in Trump's case, healthcare reform, are easier said than done. There are even some observers who think that any infrastructure proposal may be postponed until 2018 when it could be used to build political support for Republicans running in the mid-term elections.

FY'17 and FY'18 Budget and Appropriations

The federal government is still operating under a temporary Continuing Resolution (CR) for FY'17. The short-term CR expires at the end of April. Between now and then Congress will have to decide whether to pass another CR for the remainder of the fiscal year or try to pass new federal agency appropriations bills as part of an omnibus package. Many believe that the easiest thing for Congress to do, given all that is on their agenda, is to pass a year-long CR and then move on to deliberations on the FY'18 budget. However, a year-long CR would fund federal agency programs at the same level as in FY'16. In the case of the highway, transit, and rail programs authorized by the FAST Act, that would mean foregoing the increase in funding authorized for FY'17. Congress also needs to grapple with the debt ceiling this spring – an always contentious issue.

Moving on to FY'18 (which starts on October 1, 2017), the Administration is expected to release a so-called "skinny" budget during the week of March 13. This will be a 100+ page overview of its FY'18 budget recommendations with a limited amount of detail regarding funding for specific agency programs. The full budget proposal isn't expected until late April or early May. It appears that Trump will propose large increases in defense, law enforcement, and veterans funding (as much as $54B) which will be paid for with equally large cuts in foreign aid funding and domestic discretionary programs.

It is unclear whether the domestic cuts will include cuts to transportation and other infrastructure programs. Some conservative groups, such as the Heritage Foundation, have pushed for large cuts in transit and Amtrak funding. However, in his remarks at the joint session of Congress this week, President Trump reiterated his strong support for infrastructure investment. It is not clear how the Administration would justify near-term cuts in infrastructure programs while simultaneously laying the ground-work for a $1 trillion

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investment in infrastructure which, according to the various unofficial lists of projects floating around, may well include transit and rail projects.

Whatever the Administration ends up proposing in its FY'18 budget request, it is ultimately up to Congress to pass an FY'18 Budget Resolution and the individual federal agency appropriations bills. While the Republican-majority Congress will certainly want to support President Trump, it is very likely many Members of Congress, and not just Democrats, will have their own budget priorities.

Trump Administration Regulatory Actions

On January 20, the Trump Administration issued a "Regulatory Freeze Pending Review" memo. It requires that the effective dates of certain federal regulations that were issued in the final days of the Obama Administration be postponed for review by the new Administration. It has impacted at least one key US DOT regulation. In the February 13 Federal Register, FHWA published a notice delaying the effective date of two FAST Act Performance Measures until March 21. Here is a link to the Federal Register notice. The two final regulations - Assessing Pavement Condition and Bridge Condition for the National Highway Performance Program, and Assessing Performance of the NHS System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program.

The President also issued an Executive Order on Reducing Regulation and Controlling Regulatory Costs intended to further reduce regulatory burden by requiring agencies to identify at least two prior regulations for elimination, for every one new regulation that is issued; the "two out, one in" approach. Additionally, the Executive Order calls for balancing the costs of implementation for all new and repealed regulations for FY'17, such that the net total incremental cost is zero.

This week President Trump ordered his administration to rescind and rewrite an Obama-era environmental rule that critics say gave the U.S. government too much power to regulate waterways nationwide. Trump signed a directive on Tuesday compelling the U.S. Army Corps of Engineers and the Environmental Protection Agency to reconsider the controversial 2015 "Waters of the U.S." rule.

In late January, President Trump issued an Executive Order on Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects. It establishes the policy to streamline and expedite environmental reviews for all infrastructure projects and empowers the Chair of the Council of Environmental Quality (CEQ) to determine whether a project qualifies as a "high priority" project.

In addition to the Administration's actions on regulatory reform, the Republican-majority Congress has recently repealed a number of Obama Administration regulations using the authority of the Congressional Review Act (CRA). The CRA allows Congress to reach

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back retroactively and kill final rules issued in the last six months of the Obama Administration. Most of the regulations repealed to date impact environmental regulations. Additional rules are under consideration for repeal.

Trump Administration Appointments and Nominations

While Congress is making slow but steady progress on confirming most of President Trump's cabinet nominations, most positions below the secretarial level remain unfilled. At US DOT, Secretary Chao is the only confirmed appointment. No nominations have been announced for any of the modal administrators, Deputy Secretary, or various assistant secretaries. While Secretary Chao has named a Chief of Staff, Michael Britt, and a few other senior advisors in her personal office, most have little or no transportation background. While it has often taken until May or June for previous administrations to get reasonably staffed, the timing this year is particularly slow. Numerous rumors continue to flow regarding potential nominees, but none appear to be more than just speculation.

In addition, the Trump Administration's federal agency hiring freeze is making it difficult for federal agencies and offices, such as US DOT's newly reorganized Build America Bureau, to staff up and fill critical vacancies.

In the meantime, initial development of a potential infrastructure package is primarily being handled by the White House National Economic Council (NEC) under the leadership of Director Gary Cohen. A recent addition to the NEC is DJ Gribbin, who is the Special Assistant to the President for Infrastructure Policy. DJ previously headed government advisory for Macquarie Capital, a role in which he led advisory teams structuring P3 transactions for governmental clients. He served as FHWA Chief Counsel and US DOT General Counsel in the George W Bush Administration.

Other News

The Eno Center for Transportation has released a new report: *Life in the FASTLANE: Recommendations for Improving Federal Freight Grants*. The report provides a brief history of the FASTLANE program (called "Nationally Significant Freight and Highway Projects" in the FAST Act), outlines the grant program's parameters, and provides a summary of projects that were awarded funds from the first round of applications. Eno's report also makes six recommendations for the future of the program.

Additional information and materials, including archived Washington Updates, are located on the WSP | Parsons *Federal Briefing* website at www.federalbriefing.com .

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