White House Releases Long-awaited Infrastructure Proposal

Introduction

On Monday, the Trump administration released the President's long-awaited infrastructure proposal, providing further details on the principles the administration has been discussing since the President released his FY 2018 budget proposal last May. A copy of the 53-page proposal is linked here.

As expected, the proposal calls for US$200 billion in direct Federal funding over 10 years for new infrastructure grant programs, increased funding for the Department of Transportation (DOT) and US Department of Agriculture (USDA) loan programs, expanded Private Activity Bonds (PABs) and a Federal capital financing fund. According to the administration, unidentified spending cuts will pay for this new spending.

In several fundamental ways, the plan seeks to rewrite the rules of how infrastructure projects are advanced and funded at the Federal level.

The plan offers a significantly reduced Federal share for infrastructure project grants under its Infrastructure Incentives Initiative, shifting greater funding responsibility to states and local governments. At the same time, the plan greatly expands infrastructure finance tools that provide lower-cost loans to both public and private infrastructure project sponsors and makes long-sought improvements to several categories of infrastructure PABs to provide privately advanced projects with enhanced access to tax-exempt debt. Beyond PABs, the plan includes several tools to increase private sector infrastructure investment, including liberalized tolling provisions, simplified rules for the disposition of Federal assets and support for asset recycling.

With the stated aim of completing Federal environmental and other permitting approvals within two years, the proposal would significantly revise a number of Federal environmental review and project delivery requirements. Additionally, the proposal would provide state and local governments with more control over infrastructure projects through the delegation of permitting authority and relaxed Federal requirements for smaller projects. State and local governments would also be permitted to repay the Federal portion of completed infrastructure projects to release them from the Federal requirements associated with Federal infrastructure grants.

Congressional Democrats have already voiced opposition to the proposal, arguing that the plan's US$200 billion is insufficient to address the nation's growing backlog of infrastructure needs and that the plan shifts funding burdens to states and localities but offers no solution to the chronic shortfall in revenues to the Highway Trust Fund.

New Infrastructure Grant Programs

Three new Federal infrastructure grant programs are proposed: Infrastructure Incentives Initiative; Rural Infrastructure Program; and Transformative Projects Program.

The proposal would provide US$100 billion for the **Infrastructure Incentives Initiative**, a DOT, Environmental protection Agency (EPA) and US Army Corps of Engineers (USACE) program designed to incentivize state and local governments to raise their own revenues – or attract private revenues – through Federal discretionary grants for projects with significant contributions of non-Federal funds from public and private sources. Where Federal highway and transit formula programs now fund up to 80% of project costs, Federal grants under this new incentive initiative would be limited to 20% of project costs. While a chief aim of this program is to encourage states and localities to identify *new* revenue streams for infrastructure projects, states and local governments would earn partial credit for non-Federal revenues raised in the previous three years. The program would fund projects in a broad range of infrastructure sectors, including surface transportation, airports, passenger rail, ports and waterways, flood control, water supply, hydropower, water resources, drinking water facilities, wastewater facilities, stormwater facilities, and brownfield and Superfund sites.

Understanding that many rural infrastructure projects are not able to attract private financing, the White House proposal would provide US$50 billion, the majority of which would be apportioned to states as block grants, for the **Rural Infrastructure Program**. The goals of this program are to modernize rural infrastructure systems, increase rural economic growth and competitiveness, and expand access to markets, customers and employment opportunities. Eligible projects would include transportation, broadband, power and electricity, drinking water and wastewater improvements.

To fund higher-risk projects that may be unable to secure financing through the private sector, the proposal would include US$20 billion for the **Transformative Projects Program** to provide discretionary grants focused on innovative and transformative infrastructure projects that are capable of generating revenue and providing net public benefits. The Department of Commerce would administer this program, leading an interagency selection committee comprised of representatives from other relevant Federal agencies.

While a much smaller funding pot than the incentives program, this transformative program would provide higher Federal shares of project funds, 30% for demonstration projects, 50% for project planning and 80% for capital construction. Capital construction project sponsors would be required to share with the Federal government the revenues generated by each project.

Enhanced Finance Tools

To achieve the related goals of leveraging limited Federal funding to produce US$1.5 trillion in infrastructure investment and attract greater private capital, the proposal would significantly expand funding and eligibility for Federal credit assistance programs and PABs.

The proposal would direct US$14 billion for the expansion of the Transportation Infrastructure Finance and Innovation Act (TIFIA), Railroad Rehabilitation and Improvement Financing (RRIF), Water Infrastructure Finance and Innovation Act (WIFIA), and Rural Utility Service (RUS) programs. Additionally, the proposal would broaden TIFIA program eligibility to include airports and ports and fund RRIF credit risk premiums for short-line freight and passenger rail projects. The proposal also includes several provisions reforming the WIFIA program, including expanding eligibility for non-Federal flood mitigation, navigation and water supply projects and authorizing brownfield rehabilitation and Superfund cleanup projects; reducing required credit rating agency letters from two to one; increasing funding for WIFIA administration; and allowing for WIFIA funds to reimburse costs incurred prior to loan closing.

To lower the costs of debt financing for private sector investors in infrastructure projects, the proposal would provide US$6 billion to expand surface transportation PABs; broaden eligibility for several categories of exempt facility PABs; create new PABs for flood control and stormwater, rural broadband and remediation costs on brownfield and Superfund sites; and remove state volume caps and transportation volume caps on PABs for public purpose infrastructure projects.

Expanded Disposition of Federal Real Property and Asset Recycling

The proposal would attempt to streamline current Federal real property disposal processes and authorize expanded Federal divestiture of infrastructure assets upon determining that such assets could be better managed by state, local or private entities.

The Federal government could offer assets for sale at fair market value, without preferences or rights of first refusal by state and local governments. Additionally, Federal agencies would be permitted to retain the proceeds from selling real property for reinvestment in mission-critical facilities.

The proposal would also expand authority to divest a broader range of Federal assets to state, local or private entities, where agencies can demonstrate an increase in value from the sale of the asset. Examples of assets cited here include the George Washington and Baltimore Washington Parkways, the Ronald Reagan Washington National and Dulles International Airports, and several power generating facilities across the country.

Streamlined Environmental Permitting Processes

President Trump's infrastructure proposal also seeks to advance infrastructure projects more quickly and lower project costs by cutting regulatory red tape and streamlining Federal project delivery requirements. The proposal would establish a statutory two-year timeline for reviews under the National Environmental Policy Act (NEPA), including 21 months for environmental reviews and three months for permitting decisions. The document also proposes to create a "One Agency, One Decision" structure for environmental reviews, delegate more responsibilities to states, direct the Council on Environmental Quality (CEQ) to issue regulations streamlining the NEPA process, and reform judicial review standards, among other provisions.

Reformed Workforce Development Programs

The proposal also includes provisions designed to strengthen the American workforce and ensure there are skilled workers to fill jobs created by increased infrastructure investment. This would include expanding eligibility for the Pell Grant program to short-term programs that lead to a credential or certification in an in-demand field; reforming career and technical education programs to promote STEM education and expand apprenticeship programs; and reforming the Federal Work Study program to enhance support for students pursuing a career and technical education. The proposal would also reform licensing requirements to ensure that workers with out-of-state skilled trade licenses are permitted to work on infrastructure projects that include Federal funding.

Conclusion

This proposal is now in the hands of Congress, which seeks to craft a bill that could gain bicameral, bipartisan support in a contentious election year. As is often the case, the sticking points will likely be how much to spend and how to pay for it.