

Analysis: FAST forward

The FAST Act has been extended by a year, but there's hope that a more comprehensive replacement is in the pipeline

At the start of October, President Trump signed the reauthorization of the Fixing America's Surface Transportation (FAST) Act, seen by many as a move that gives congress the breathing space it needs to start to think about new legislation.

"A one-year extension is not uncommon, but the goal is to get a long-term bill," says Congressman Bill Shuster, former Chairman of the House Transportation and

Infrastructure Committee and now a senior policy advisor at law firm Squire Patton Boggs.

"We have here an opportunity to move on this measure," agrees Rodney Slater, partner at the same law firm and former Secretary of Transportation under the Clinton Administration.

The FAST Act was originally signed into law in 2015 – under the stewardship of Congressman Shuster as one of the bill's sponsors – but no new bill has emerged in the past five years to take its place when it expired at the end of September. The hope now is that there will be enough momentum over the next 12 months to create something that can replace it before the one-year extension runs out.

"There wasn't enough time to put together a larger package," says Andrew Olmem, partner at law firm Mayer Brown and former deputy assistant to the President for economic policy, and deputy director of the US National Economic Council in the current White House administration. "The extension puts that [potential larger package] into the first year of a new presidential term and that is usually a good time to get things done."

So how will we get there? And what will it look like if there is a new bill?

Congressman Shuster argues the "secret sauce" of any new, comprehensive legislation is getting bipartisan buy-in right from the beginning. He refers to his own time in government, pointing out that his most successful legislative efforts were those that ensured both his own Republican colleagues and Democrats were on board with the plans from the beginning.

While it has often been said over recent years that the one thing Republicans and Democrats agree on is the need for better infrastructure, that has not yet translated into a comprehensive package of measures. There is a growing sense that the time may now be at hand, however.



“There is an awful lot of momentum from both sides of the aisle politically in terms of putting together a much more comprehensive infrastructure package,” says Mayer Brown partner Joe Seliga.

“No project is Republican or Democrat,” says Secretary Slater. “It is for their constituents. It is important to acknowledge there is a reservoir of support to deliver something.”

The first year of a new presidential term is also being seen as a good time to start – whoever is in office.

“President Trump has been a strong voice for infrastructure and Vice President Biden has made infrastructure investment central to his economic plan,” says Secretary Slater.

There is also consensus that whatever package is put forward, it will be far more wide-reaching and comprehensive than the FAST Act, which largely focuses on surface transportation.

“There is a desire to do more in various other areas of infrastructure,” says Seliga. “For example, airports, ports, rural broadband, green and renewable energy.”

While Congressman Shuster agrees that any new bill will likely get increased buy-in if it covers areas like broadband for rural communities, he also warns that those writing the package should be careful not to “overreach themselves”. He explains: “There should be some green infrastructure elements in there. But to try to eliminate carbon by 2030 or 2035, for example, that is a much bigger ask and, to use a transport pun, a bridge too far.”

Secretary Slater agrees that any efforts to move to a greener economy, the bill “will have to take account of where are the jobs that people have today to where they want to be”.

Seliga, meanwhile, warns that getting Congress to agree a comprehensive bill, covering a wide variety of areas, may prove tricky. “Typically Congress has not acted like this; it has been split by different areas of infrastructure,” he explains.

Nonetheless, there remains strong hope that, driven by a newly elected president with a five-year mandate, such a bill can be developed. “The first piece of legislation for the next president should be an infrastructure bill,” says Congressman Shuster. “It is the perfect vehicle to help heal the wounds in America.”

Assuming such a bill can be developed, the next question is what role, if any, P3s will play in it.

“There is certainly support among both parties for elements of P3,” says Seliga. “There is recognition that, given the magnitude of issues, P3 is an element that can be helpful. It can be a strategic element of an infrastructure plan, but not necessarily the leading component.”

Congressman Shuster agrees. “P3s are a tool in the toolbox,” he says, but also points to asset recycling as a way of boosting investment. “I tried to push asset recycling when in Congress but I got a lot of pushback, from both republican and Democrat colleagues.”

At a state and municipal level, though, Congressman Shuster believes there are many authorities that are looking at that as an option.

“We’re likely going to see greater use of asset recycling,” adds Secretary Slater.

Indeed, he goes further and suggests that all the different elements of infrastructure that are coming together, along with novel approaches to financing them, is “the birthing of the Fourth Industrial Revolution, with a greater reliance on technology, 5G, and broadband, as well as traditional forms of infrastructure investment”. He points out that many pension funds are eagerly looking for opportunities in the infrastructure sector due to its capacity for providing steady growth – something that a number of pension funds around the world have already taken advantage of.

“There are great opportunities for P3s,” adds Seliga. “It’s important for us in the P3 industry to advocate and educate about the benefits of the model.”