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Federal Legislative Proposals at a Crossroads? - Ballard Spahr

Surface transportation has been a topic of federal policy consideration in recent weeks. The U.S. House of Representatives floated a partisan, large transportation bill, while the U.S. Senate continues to advocate for a bipartisan surface transportation-heavy bill. The Trump administration, meanwhile, focused largely upon removing ostensible project delivery impediments. There's been a flurry of activity, yet no clear sign of the compromise.

On June 3, 2020, the House Transportation Committee unveiled the full text of its Investing in a New Vision for the Environment and Surface Transportation in America (INVEST in America) Act. The proposed legislation provides for $494 billion in spending over a five-year period to modernize existing infrastructure, fund new infrastructure projects, and increase funding for related government programs. The proposal would direct $319 billion to the Federal Highway Administration's Federal-Aid Highway Program, $105 billion to the Federal Transit Administration, and $60 billion to various governmental recipients with the aim of improving intercity railway infrastructure.

The INVEST in America Act places particular emphasis on modernizing and improving the weatherization of existing roads and bridges, with $6.25 billion apportioned for a newly created natural disaster mitigation program aimed at bolstering long-term resilience of existing infrastructure. Mitigation of climate change is also a central aspect of the legislation through measures such as an $8.4 billion carbon reduction program, $1.8 billion in funds for low-emission vehicle infrastructure, and an increase in funding to public transit agencies, including a $958 million increase in the base authorization of FTA's Capital Investment Grants program. Transportation safety programs would also see funding increases, with the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration authorized for $5.3 billion and $4.6 billion in funds, respectively. Where the bill doesn't appear to turn to public-private partnership (P3) approaches outright to these projects, it is clear that P3s are available and certainly not precluded.

The full text of the INVEST in America Act can be found here.

In the Senate, Environment and Public Works Committee (EPW Committee) Chairman John Barrasso (R-Wyoming) has continued to push for passage of the America's Transportation Infrastructure Act (ATIA), a bipartisan effort which passed the EPW Committee by a unanimous vote in July 2019. ATIA would authorize $287 billion in spending from the Highway Trust Fund over a five-year period with a primary focus on road and bridge maintenance. The proposed legislation also aims to streamline project delivery by establishing a two-year target for completion of environmental reviews relating to highway projects and a 90-day target for issuance of subsequent related project authorizations. The full text of ATIA can be found here.

Elsewhere, in response to the COVID-19 pandemic, on June 4, 2020, President Trump issued an Executive Order on Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities (6/4 EO). The 6/4 EO provides broad

direction to federal agencies administering infrastructure projects to "…take all reasonable measures to speed infrastructure investments and to speed other actions in addition to such investments that will strengthen the economy and return Americans to work, while providing appropriate protection for public health and safety, natural resources, and the environment, as required by law." The 6/4 EO also requires applicable federal agencies to review the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act, and identify any actions which may be taken thereunder in furtherance of economic recovery. The full text of the 6/4 EO can be found here.

Any of the strategies—the House's rail/transit-heavy strategy, the Senate's repair and preserve strategy, and the White House's expedited delivery strategy (shared with the Senate)—acknowledge the need to establish and implement an infrastructure and transportation public policy. President Trump has been promising a $1 trillion infrastructure plan since his 2016 campaign, although not much progress has been made. With the September expiration of the FAST Act—the last comprehensive federal transportation bill signed into law—the time is now.

Although the release of respective transportation infrastructure bills by the House Transportation Committee and Senate EPW Committee should serve as an important starting point for negotiations between the two chambers, observers caution that the November election and an anticipated focus on short-term funding measures in response to the COVID-19 pandemic make passage of a comprehensive infrastructure bill unlikely in 2020. But collectively, they do appear to mark the spaces and approaches favored by the political parties, and depending on the results of the November elections, which direction transportation public policy will likely proceed.

Attorneys in Ballard Spahr's P3/Infrastructure Group routinely monitor and report on new developments in federal and state infrastructure programs related to transportation and other types of projects.

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