

A review of the White House Infrastructure proposal released on Monday, Feb 12th.

As was discussed during the IBTTA Government Affairs Committee during their fly-in to Washington last week, the “Legislative Outline for Rebuilding Infrastructure in America” released by the White House on February 12th reflects the framework of things we had seen earlier in “leaked” and other discussion documents. The Infrastructure package proposes \$200 billion in direct federal funding (over 10 years) which would be distributed through a series of potential programs.

Funding proposals

- \$100 billion for an “**Infrastructure Incentives Program**”: This program would be led by USDOT, EPA, and the US Army Corps of Engineers. The funding would be allocated to these agencies at unspecified levels be available for “incentive” grants. Project sponsors would be State and local governments (county, city, regional), who would apply and compete for funding for projects across a broad suite of infrastructure asset classes. Eligible asset classes for this program are defined as surface transportation and 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.

Funding for successful projects would be limited to no more than 20 percent of the total project cost (with no state receiving more than 10 percent of the \$100 billion). In addition, project sponsors must demonstrate their ability to provide for long-term capital and O&M funding of the project through increases in their own tax and user fee revenues. The proposal also includes a three-year “look-back” provision to acknowledge recent tax and fee increases at the state and local level.

- \$50 billion for a “**Rural Infrastructure Program**”: This program would provide \$40 billion as block grants to Governors based on an undetermined “rural formula,” that would include formula factors such as rural lane miles and rural population, to create a minimum and maximum eligibility “range” for each state. Possibly administered by the Department of Agriculture.

Funds could be used for any of the following asset classes:

Transportation: roads, bridges, public transit, rail, airports, maritime and inland waterway ports
Broadband (and other high-speed data and communication conduits)
Water and Waste: drinking water, wastewater, stormwater, land revitalization and brownfields
Power and Electric: governmental generation, transmission and distribution facilities
Water Resources: flood risk management, water supply, and waterways.

The remaining \$10 billion of the rural infrastructure program would be available for “Rural Performance Grants” that states would have to apply for and would require the development and publication of a “Rural Infrastructure Investment Plan.”

- \$20 billion for a “**Transformative Projects Program**”: This program would be administered by the Department of Commerce and would provide funding for what are called “riskier” projects that offer a “large reward profile” on infrastructure performance, costs, and benefits, but suffer from a lack of viable private sector financing. The program would provide federal funding and technical assistance for “bold, innovative, and transformative infrastructure projects that could dramatically improve infrastructure”.

Eligible asset classes for the transformative projects program include transportation, clean water, drinking water, energy, commercial space, and broadband sectors.

These dollars would provide a tailored federal share of project costs, ranging from 30 percent for a “demonstration track,” 50 percent for a “project planning track,” and 80 percent for a “capital construction track.”

- \$20 billion for “**Infrastructure Financing Programs**”: The Administration proposed a dramatic increase in federal budget support for various infrastructure credit assistance (i.e., loan) programs, including TIFIA, while also expanding the use of Private Activity Bonds (PABs).

For loan programs, the Administration’s plan would increase the available subsidy funding, provide federal subsidy funding where it is currently unavailable, and expand the eligible pool of projects for such programs.

With regard to PABs, the proposal makes several modifications to PAB eligibility: removes transportation PAB volume caps for public purpose infrastructure projects, removes a preference under the Alternative Minimum Tax, extends remedial actions to long-term leases or concession agreements by either issuing PABs to cover the outstanding muni-bonds or allow “recycling” the present value of the lease payments into government use within two years and finally, includes an allowance for continued reliance on tax exempt debt when converting publicly-owned and financed assets to those leased to a private partner.

- \$10 billion for a “**Federal Capital Financing Fund**”: Funding under this program would enable capital budgeting of large federal acquisitions, as opposed to having to receive Congressional appropriations for the full purchase price in any given fiscal year, which currently encourages the use of annual lease payments. Related provisions include proposals to dispose of existing federal real property and funding federal lands infrastructure based on half of the receipts generated from mineral and energy development on public lands (to be capped at \$18 billion).

Policy proposals

Tolling provisions

- Provide States flexibility to toll on Interstates and reinvest toll revenues in infrastructure. Currently, Federal law allows tolling Interstates in limited circumstances. Tolling restrictions foreclose what might otherwise serve as a major source of revenue for infrastructure investment. Providing States flexibility to toll existing Interstates would generate additional revenues for States to invest in surface transportation infrastructure. Current requirements that States must reinvest toll revenues in infrastructure would continue to apply.
- Reconcile the grandfathered restrictions on use of highway toll revenues with current law. Toll facilities that received Federal approval under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA) may use toll revenues only for the construction, reconstruction, operation, and debt service of the toll facility itself. Current law, however, allows other toll facilities to use toll revenues (in addition to the costs noted above) on other title 23 projects. The tighter restrictions, specific to the STURRA toll facilities, prevent some States from devoting existing toll revenues to other critical highway projects. Adjusting the STURRA “use of revenues” provisions to align with current toll authorities would free these resources and allow other critical highway projects to go forward.

Environmental streamlining

The proposal includes several project permitting “improvements”, including:

- Protect the Environment through a Structure that Establishes Firm Deadlines to Complete Environmental Reviews and Permits
- Require a Single Environmental Review Document and a Single Record of Decision Coordinated by the Lead Agency
- Direct the Council on Environmental Quality to Issue Regulations to Streamline the NEPA Process
- Focus the Scope of Federal Resource Agency NEPA Analysis on Areas of Special Expertise or Jurisdiction
- Reduce Duplication and Increase Flexibility in Establishing and Using Categorical Exclusions
- More Effectively Address Environmental Impacts by Allowing Design-Build Contractors for

- Highway Projects to Conduct Final Design Activities before NEPA Is Complete
- Authorize Federal Agencies to Accept Funding from Non-Federal Entities to Support Environmental and Permitting Reviews

While this is a significant document, the White House has been very careful to identify it as a set of “principles”, meaning there is no legislative language associated with it. There is no clearly identified source of revenue to support the suggested funding. Washington lobbyists do get excited when the White House mentions transportation since any ideas broached can encourage the Congress to possibly act on them. The burden of writing legislative language completely falls on the Congress and they are free to include or ignore any “principles”.

This has expanded the conversation about tolling – for good and bad – much of the initial press analysis of both the budget and the infrastructure has tended to conclude that it’s all about passing costs back onto the states and they will have little choice but adopt tolling. Remember that the Obama administration twice referenced Interstate tolling as well but they did little to advance the concept and expended no political capital to support it. The “Grow America Act” from 2015 was the Obama Administration’s legislative proposal for a revised highway program that also called for removing barriers to the tolling of existing Interstate mileage (sect. 1405).

Based on DOT Secretary Chao’s press conference on Tuesday the Administration is acknowledging tolling as one potential “pay-for” but is also pointedly not recommending or endorsing it, suggesting it is up to the states to make such determinations in assembling their own packages and proposals.

Following are links to several documents that may be of interest:

- the Infrastructure plan itself (55 pages)
- a supporting Fact Sheet (6 Pages)
- the transcript of DOT Secretary Chao’s 02/13/18 press conference
- for reference the language from the 2015 Grow America Act (sect 1405) which addressed tolling.