NATIONAL TAXPAYERS UNION

Issue Brief

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With Targeted Reforms, COVID-19 Response Can Unleash Private Sector Infrastructure Investment

Congress recently passed a historic $2.2 trillion bill to stem the devastating public health and economic impacts of the COVID-19 (coronavirus) pandemic. This ‘Phase 3’ package followed much smaller Phase 1 and Phase 2 efforts passed by lawmakers, and Congressional leaders are already turning their focus to a Phase 4 package. As Washington considers other steps for responding to the coronavirus pandemic, President Trump and House Speaker Pelosi both have suggested the Phase 4 package could include spending on infrastructure. Although recent reports indicate this plan may be shifting to a standalone package, it is clear that infrastructure still has allure for members of both parties.

Just two weeks ago, the president stated his desire to enact a massive $2 trillion infrastructure package and House Democrats released a 5-year $760 billion spending plan on a host of issues. With the White House and Congress supportive of such a plan, it seems we could be closer than ever to a large scale infrastructure spending package being a reality.

Key Facts:

- **There is a menu of bipartisan legislative options that will promote market forces to maximize every taxpayer dollar spent on infrastructure.**
- **Lawmakers should prioritize private sector investment and regulatory reforms over another massive federal spending infrastructure package.**
- **Removing inefficient federal mandates can lower construction costs and boost transportation development.**

Infrastructure has long been a priority of the Trump Administration, and with a divided Congress, it's one of the few issue areas with some semblance of bipartisan agreement. In spring 2018, in fact, it looked like a deal had been reached after President Trump and Congressional leaders announced they had a handshake agreement over a $2 trillion infrastructure spending deal. But two years later, Congress has yet to release even a draft bipartisan framework.

There is no question federal and state policymakers should take action to address America's ailing infrastructure situation. Outdated infrastructure hampers the ability for American businesses to remain competitive in a globalized world. Meanwhile, workers and self-employed Americans lose the equivalent of tens of billions of dollars in time and productivity, whether stuck in traffic or stuck with a slow internet connection. A modernized infrastructure and transportation system will ensure that individuals and businesses maximize their growth potential.

But from the perspective of taxpayers, recklessly adding $2 trillion in new spending to a national debt that is already projected to rise by $12 trillion over 10 years would be financially irresponsible. Any new infrastructure spending must be allocated in a manner that efficiently prioritizes our most pressing projects without replicating the bureaucratic, federally driven process that has been utilized in Washington for decades. More importantly, if the goal is to boost the economy due to the fallout of the coronavirus, lawmakers will surely be disappointed by the time it will take for these jobs to be "shovel ready." Furthermore, simply throwing more taxpayer dollars into infrastructure ignores the very real progress that could be made in removing public sector obstacles to private sector-driven solutions.

It is imperative that the administration focus on maximizing every already-appropriated infrastructure dollar and retool existing regulations that are inefficient or unnecessary. The federal government has a well-documented history of squandering taxpayer dollars on projects that could be funded by the private sector, state governments, or not funded at all. National Taxpayers Union (NTU) offers a series of policy recommendations that Congress and the administration can take to foster a more competitive, nimble, and responsible approach to transportation and infrastructure in the United States.

Specifically, the administration should havefor major goals for infrastructure:

- **Ensure current infrastructure spending is allocated in an efficient manner that minimizes waste.** Eliminating unnecessary federal mandates that increase the cost of infrastructure spending will maximize the impact of every taxpayer dollar.

- **Promote private capital investment through deregulation.** Eliminating regulations that suppress the private sector's ability to finance public infrastructure projects will make their completion more likely to be on time and under budget.

- **Adhere to free-market principles.** As we've seen in virtually every comprehensive transportation-specific deregulation action (like airlines, freight rail, and trucking), the free market will always increase productivity and lead to better economic outcomes. Government must allow the market to drive better outcomes.

- **Promote Public Private Partnerships.** These innovative, practical structures harness the expertise of the private sector to address an issue of longstanding concern for taxpayers: ensuring cost-effective construction of projects.

The House Infrastructure Framework

The outline put forward by the House of Representatives spends $760 billion over a five year period—far less than the $2 trillion the president requested. This framework provides only a broad overview of where the money should be spent, not a specific legislative agenda. It seems intended more as a platform for generating productive debate over the details and its funding and financing mechanisms.

While it is encouraging that the framework spends less than the administration's request, it contains numerous flaws that should concern taxpayers. For instance, it proposes excessive public expenditures on mass transit systems and duplicative broadband infrastructure for areas that already have access to high-speed service.

Specifically, we strongly oppose the following provisions contained in the House framework and urge policymakers to exclude them from any upcoming package:

Buy American Restrictions and Other Trade Barriers: These mandates require that certain components of products must be manufactured within the United States. Protectionist policies like "Buy American" laws limit selection and artificially limit competition, which often lead to higher costs. Essentially, these laws prohibit taxpayers and contractors from getting the best value on projects.

Expansion of Davis-Bacon: The 1931 law requires that workers on federally funded projects be paid a "prevailing wage"—the hourly wage paid to a majority of other workers in the area. This often pegs wages to the typically high cost of union labor, artificially inflating the price of public projects and boxing less-skilled or well-connected laborers out of the job market.

Duplicative Spending on Internet Infrastructure: Bridging the digital divide for communities that do not have access to broadband internet should be a priority for governments and private companies. However, federal funding should not be used to create duplicative broadband infrastructure in areas that already have access to high-speed services. The private sector is best suited for innovating and improving services for these communities—including those that are "underserved"—while the federal government should solely focus on unserved areas that completely lack high-speed broadband.

New Taxpayer Investments in Preferred Energy Technologies: Government shouldn't be in the business of picking winners and losers in the marketplace. Provisions in this framework would create further distortions with expanded government funding and regulations. At a time when private investment in renewable energy projects continues to rise, policymakers should remove the regulatory impediments to more capital flowing toward these ventures.

Passenger Rail: The package would also spend massive amounts of money on passenger rail projects, many of which would be used by few people.

Infrastructure Priorities From the Taxpayers' Perspective

Instead of including the above provisions, lawmakers would be better served passing the following legislative proposals that have been introduced in Congress. These mostly bipartisan bills will achieve most of our four pillars to sound infrastructure spending that will protect taxpayers, minimize wasteful government expenditures, and promote private capital investment:

Sustainable Municipal Access to Resilient Technology in Infrastructure (SMART Infrastructure) Act: This would unlock "open and free competition among suppliers" on projects that receive partial funding from the Federal Highway Administration, Army Corps of Engineers, the Environmental Protection Agency, and the Department of Agriculture. Unlike current policies, the legislation is material-neutral since state and local government managers would still be free to choose which materials best meet the contract specifications. Equally important, these four agencies would form a Task Force to identify and make detailed recommendations for eliminating barriers in the infrastructure process that impede cost-effectiveness, sustainability, and resiliency.

A 2013 study by the National Taxpayers Union (NTU) found it would cost $1.32 trillion to replace the nation's entire aging water infrastructure. It is projected that allowing open competition for materials in just water infrastructure projects could save over $371 billion in taxpayer funds. A separate study conducted by Massachusetts-based BCC Research found removing barriers to competition could save up to 39 percent per mile in pipe costs alone. Furthermore, the concept of open competition is not limited solely to energy and water infrastructure but can be applied to numerous other aspects of publicly funded projects that have been limited for decades by outdated restrictions on materials.

Public Buildings Renewal Act (PBRA): This bill is key to restoring fiscal responsibility to state and local government building projects such as schools, fire stations, and public libraries. PBRA smartly and carefully expands the availability of Private Activity Bonds to help underwrite more Public-Private Partnerships for these facilities, which have been proven to save as much as 25 percent over the life-cycle project cost.

Generating American Income and Infrastructure Now Act: This legislation would sell off some government assets and use the generated revenue in two unique ways: half would be sent to the Treasury Department to pay down existing debt and the other half would be used to fund projects in the 100 poorest communities around the U.S. While selling government assets isn't new (it was proposed by President Reagan to pay for tax reform and mentioned by President Trump last year), taxpayers should appreciate lawmakers looking for creative ways to generate revenue without levying a tax increase.

Air Traffic Control Reform: Due to agency and congressional mismanagement, the ongoing attempt at modernizing U.S. air traffic control has been plagued by billions of dollars in cost overruns, years of delays, and uncertainty as to whether many of the promised improvements will ever materialize at all. These failures have resulted in reams of scathing government audit reports, but to date nothing has been done to address these systemic problems. Meanwhile, nations across the developed world have pursued what has proven to make a positive difference for taxpaying travelers: divesting the function of daily air traffic control operations to a user-funded nonprofit entity while limiting the government's function to safety regulation. Decades-old ATC technology have cost the U.S. public and economy $25 billion per year due to delays and congestion. Reforms should include transitioning the ATC system from the FAA to a non-profit corporation with a board of diverse stakeholders, while retaining the function of safety regulation within the government.

Fair and Open Competition Act: This legislation would prohibit project labor agreements (PLAs) from being mandated on taxpayer-funded construction projects. These controversial agreements frequently produce higher construction costs than under open and fair competition for contracts. An array of academic studies indicate that these economically flawed agreements produce construction projects that are 12 to 18 percent more expensive than comparable non-PLA projects. Taxpayers deserve to have their taxes spent in a cost-effective way to ensure each dollar's value is maximized, not wasted or used to fund organizations which engage in political and lobbying activity.

Revamping American Infrastructure Act: This legislation would create a process at the Department of Transportation to identify more opportunities for converting "prescriptive" federal dictates into outcome-based rules. Already in place and working well for truck safety, this approach incentivizes innovation for meeting regulatory benefits while controlling costs and should be expanded for freight rail and other forms of infrastructure.

Davis-Bacon Repeal Act: The 1931 Davis-Bacon Act (DBA) is an expensive mandate requiring contractors for federal construction projects to pay prevailing union wages for non-union labor. On average, taxpayers are forced to pay wages that are 22 percent higher than market rates. The result, according to the Heritage Foundation, is more than $100 billion worth of additional costs over the next decade and fewer job opportunities on each project. DBA gives unionized firms an advantage when bidding on infrastructure projects, keeping taxpayer costs unnecessarily high and competition to a minimum.

Repeal the Essential Air Service (EAS): Created in 1978 as a 10-year venture that would ease the transition to a more market-driven commercial aviation sector, EAS has, like many other federal programs, engendered constituencies that have kept the program alive far beyond any demonstrable purpose. Indeed, NTU questioned the need for EAS in the first place, given the fact that robust and competitive air services would fulfill consumers' needs more efficiently than any government subsidization scheme. Unfortunately, in 2017 Congress passed legislation that gradually increases EAS funding to $172 million annually in 2023. NTU constantly calls for the elimination of the program and was a recommendation for deficit reduction in the 2017 "Common Ground" report, a joint project by NTU's research arm and the U.S. Public Interest Research Group.

9-1-1 Fee Integrity Act: This legislation would prevent states from diverting 9-1-1 fees collected from consumers on their phone bills, to other non-9-1-1 programs. According to the FCC, nearly $1 billion in 9-1-1 fees intended to boost local emergency response services has been misdirected toward unrelated items in states' budgets. When states siphon fees that are paid by consumers away from important response services, it can lead to a shortage of staff at call centers and longer wait times for first responders to get to the scene of the call.

Communications Facilities Deployment on Federal Property Act: This legislation would make permitting processes for installing communication facilities on federal property less burdensome.

Abandon Efforts to Hike Taxes on Travelling Consumers: Taxpayers who travel via air are incredibly overburdened. In fact, Americans already pay 17 different taxes and fees when purchasing an airline ticket. These taxes and fees can account for 20 percent or more of a typical $300 round-trip ticket. It would be irresponsible for Congress to pass legislation that further burdens travelers by taking more money from their pockets by raising taxes and fees. Specifically, Congress should avoid raising the Passenger Facility Charge, which is a capped $4.50 fee per passenger at commercial airports without offsetting reductions to other taxes charged by the federal government.

Oppose Attempts to Place Price Controls on Air Travel: Legislation giving federal bureaucrats the power to set and regulate ticket changes, cancellations, and items such as baggage and seat selection. Proposals such as the Forbid Airlines from Imposing Ridiculous (FAIR) Fees Act would reverse four decades of progress toward consumer choice and lower ticket prices for the travelling public. Should this legislation become law, it could bring forth worrisome unintended consequences, like raising everyone's fares to cover those who change reservations at the last minute, or reducing the availability of refundable fares. Choices for consumers are getting better without government intervention.

Avoid Overregulation of Private Infrastructure: The House Democratic framework envisions costly and unnecessary new restrictions on portions of the nation's infrastructure that are already working well. For example, freight rail would be saddled with minimum crew size and maximum train length requirements, a ban on transport of most liquefied natural gas, and prioritization of track that freight carriers have paid for to passenger trains that belong to the taxpayer-subsidized Amtrak.

Conclusion

The best way to revitalize America's infrastructure and modernize the transportation system is to ensure tax dollars are allocated efficiently and projects are not unduly tangled in red tape. Capitalizing on the power of the free market will enable the infrastructure needs of the United States to be met in a fiscally responsible manner.

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