

Issue Brief

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BY: THOMAS AIELLO

A Primer on Infrastructure: Roadmap For a Bipartisan Package

Over the course of the 2020 presidential campaign, Joe Biden made clear his desire to make infrastructure a top priority for his administration. With a newly constituted Democratic majority in Congress, along with some Republicans expressing a willingness to cooperate, the outlook for a large-scale infrastructure package is likely. In fact, Last week President Biden stated “I can hardly wait to sit down with Peter DeFazio (Chairman of the Infrastructure Committee) to work on infrastructure. This is the next big piece.” However, the recent history of infrastructure policy has shown that a likely outlook has not translated into enacted law. It therefore remains vital for such a package to be bipartisan, based on proven-effective policies, and as fiscally responsible as possible. Like any ambitious public works project, infrastructure legislation will take planning, innovation, and hard work.

While the overall topline spending numbers of any legislation are certainly important, equally important are the details of where each dollar is spent. As an organization focused on taxpayer advocacy, NTU supports efforts to invest dollars that will repair and replace our ailing infrastructure networks. Outdated infrastructure also hampers the ability for American businesses to remain competitive

Key Facts:



With Democrats in control of the White House and the Congress, it looks likely an infrastructure package could become law.



While such a deal might cost trillions of dollars, lawmakers should prioritize sensible reforms to maximize every tax dollar.



Removing inefficient federal mandates can lower construction costs and boost transportation development.

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 dealing with a slow internet connection. A modernized, optimized infrastructure and transportation system can help to address these core economic problems and boost the nation's growth potential.

Yet simply adding trillions of dollars in spending to the national debt without regulatory reform, proper oversight, and careful prioritization is financially unsustainable and irresponsible. Furthermore, such spending will only further metastasize a bureaucratic, federally-driven process that has plagued Washington for decades.

It is imperative that the new administration and Congress focus on maximizing the value of every already-appropriated infrastructure dollar and retooling 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. As such, NTU offers up a series of policy recommendations that should be included in any upcoming infrastructure package. In our view these reasonable changes can foster a more competitive, nimble, and responsible approach to transportation and infrastructure in the United States.

Specifically, the Congress and the Administration should have these four major goals for infrastructure spending:

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. 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.

Labor

End or Modify Project Labor Agreements on Taxpayer-funded Projects: Project Labor Agreements (PLAs) mandate contractors sign a collective bargaining agreement with workers as a condition to participate in a government-funded construction project. Requiring workers to join a union in order for them to work is a discriminatory policy against the 87 percent of workers who do not belong to a union. In addition to locking the vast majority of the workforce out of the hiring process, PLAs can raise construction costs by as much as 18 percent. Imposing measures that needlessly raise costs and ultimately burden taxpayers would be especially ill-advised in an uncertain economic environment -- one more heavily laden by federal debt than in recent memory.

Congress should include language similar to the Fair and Open Competition Act, which would overturn policy that requires PLAs on taxpayer-funded construction projects. As it stands, 24 states have passed laws or executive orders that restrict PLAs and prioritize open competition for government-funded projects.

Ending or at least limiting the reach of PLAs would lower government construction costs by increasing competition and opportunities for contractors to bid on government work. A coalition of taxpayer advocacy organizations sent a letter to then-President Trump last year urging him to do so.

Implement Reforms to the Outdated Davis-Bacon 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.

Congress should include language similar to the Davis-Bacon Repeal Act, which would officially end Davis-Bacon strictures. This would allow businesses to build more projects, thereby stretching each dollar used and likely employing more people in the near term. Additionally, since DBA is a price control on private market wages, its repeal would help find an equilibrium between wages and demand.

Procurement

Congress Should Allow for Open Bidding for Construction Materials. Under current law, the U.S. does not have an open and competitive bidding process for construction materials. This lack of competition hurts taxpayers and businesses that want to compete for federally-funded construction projects. In fact, these government-imposed restrictions on materials in infrastructure and construction projects were often put in place to appease special interests by preventing competition in the bidding process. They were also enacted decades ago, when lawmakers could not anticipate the advancements and innovations in infrastructure materials that have taken place in recent years.

[A 2013 study](#) by our organization found 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.

To promote fair, open and free competition among suppliers, Congress should pass the Sustainable Municipal Access to Resilient Technology in Infrastructure (SMART Infrastructure) Act. 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. Congress can easily change the law to allow any type of material, thereby making project managers and engineers better able to evaluate different options and select materials for infrastructure projects that enhance performance, durability, and reduce costs to taxpayers.

Overtake Expensive Buy American Requirements. Buy American provisions damage United States credibility as a beacon of open markets. In 2018, former-President Trump signed Executive Order 13858, which expanded “Buy American” requirements to infrastructure projects that receive federal financing as a way to boost the use of American-made products. These mandates require 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 for projects. Essentially, these laws prohibit taxpayers and contractors from getting the best value on projects. Such protectionist measures invite possible retaliation from our trading partners, which could disadvantage domestic industries seeking to export their goods into foreign markets.

Congress should ensure that any infrastructure package does not contain these costly requirements, while overturning “Buy American” laws. According to the [Congressional Research Service](#), “Buy America could increase the cost of at least some projects, such as building highway bridges and procuring transit rail cars and buses, and may result in fewer projects being undertaken.” The goal of Buy American provisions is to boost employment, but it’s clear that with fewer projects able to begin, many jobs are “lost” before they can even be created in the first place.

Include Life-Cycle Cost Analysis for Projects. Perhaps one of the most cutting edge and cost-effective provisions that should be a requirement on taxpayer-funded projects is Life-Cycle Cost Analysis (LCCA). This is an important taxpayer guardrail which uses detailed accounting data to accurately estimate the total cost of a project, including initial construction, maintenance, and savings from alternative construction materials. In the private sector, LCCA is a standard technique that investors and managers use to determine if a given undertaking is worth the initial price. LCCA can also help to inform other types of project analysis, including Value Engineering and Technical Auditing. Incorporating LCCA in any infrastructure package would deliver transparency in what many consider an opaque, behind-closed-doors process. It would also provide officials with the most accurate information for projects that require taxpayer dollars.

Congress should include language similar to the bipartisan “Preserving America’s Infrastructure Dollars” (PAID) Act, which would require such analysis on federally-funded infrastructure projects over \$30 million. The cost savings stemming from the use of LCCA was evident in a comprehensive report from 2018, which indicated an \$91 million savings for each \$1 billion spent on pavement construction and maintenance. This 9.1 percent savings could either be used to fund additional roadways, or simply subtracted from the overall cost of the project. Without the use of LCCA, the government would be leaving valuable taxpayer dollars on the table -- solely to the benefit of entrenched special interest groups.

Permitting

Reform the National Environmental Policy Act. The National Environmental Policy Act (NEPA) requires federal agencies to conduct comprehensive environmental assessments for a wide range of infrastructure projects. The nearly fifty-year-old statute has evolved to serve more as a tool to delay and obstruct projects unpopular with special interest groups or public officials who choose to ignore scientific and technical logic. For highway projects, the average time to complete an environmental impact statement increased from 2.2 years in the 1970s to 8.1 years in 2011.

Congress should consider the Federal Permitting Modernization Act, which would accelerate the federal review process of infrastructure projects. For taxpayers and private investors who finance these projects, it should be unacceptable that these needless delays continue to swell. The United States has a long tradition of building impressive structures, and the government-driven delays ingrained into our permitting process undermine this history.

Congress should also consider the One Federal Decision Act, which would accelerate the federal review process of infrastructure projects. This legislation would reform the project permitting process by placing a two-year timeline for government completion of environmental reviews and by consolidating the process across federal agencies. The new two-year deadline for environmental reviews and authorization for major infrastructure will convey a greater degree of certainty in a growing market and reduce the capability of the federal government to unduly limit the potential of the construction industry. Additionally, the One Federal Decision Act streamlines the approval process by requiring only a single environmental document instead of multiple documents, as well as a single standardized permitting process.

Congress should also consider the Hazardous Materials Safety Improvement Act, which would expedite the review process of infrastructure projects. This legislation would require the Pipeline and Hazardous Materials Safety Administration to act within 18 months on petitions for regulatory action

Additionally, Congress could reintroduce the 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.

Funding

Ensure All Gas Tax Revenue is Used for Intended Purposes. The federal gasoline excise tax, currently levied at 18.3 cents per gallon, is intended to be a user fee. This means the revenue from this tax is used to fund the maintenance, repair, and construction of highways and roadways for these drivers use. However, almost 30-percent of gas tax revenue is diverted to non-highway projects, such as mass transit systems. Additionally, with more consumers moving toward electric vehicles which do not use gasoline, it puts more pressure on the existing revenue stream to remain constant.

Congress should consider language to ensure all gas tax revenue goes towards surface transportation repairs and maintenance. Additionally, Congress should set in motion a clear strategy to transition away from the federal gas tax. To become a true user-fee model, Congress should begin the transition to a Vehicle Miles Traveled (VMT) fee, a much more inclusive and stable revenue source than the current gas tax.

Remove Regulatory Barriers to Public-Private Partnerships. As an organization dedicated to taxpayer savings, we know all too well the poor oversight and accountability that often plague the construction and maintenance of government facility projects. The results can be projects that are over budget, behind schedule, or ill suited to efficient long term asset management practices. One way to break this cycle of waste is through Public Private Partnerships (PPP), where a single private consortium is made responsible for designing, building, operating, and maintaining a government structure. This arrangement, which is more fully guided by the lifecycle costs of a given project, also has the advantage of transferring the risk of excessive costs or delays from taxpayers to the consortium and its investors. Equally important, it has functioned well in the real world. Although primarily limited to road and water projects in the U.S., elsewhere around the world PPPs are commonplace for schools and other social infrastructure, encouraging fiscal discipline in hundreds of [instances](#).

One way to break a cycle of wasteful spending is to include the Public Buildings Renewal Act in an infrastructure package. 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. For several years now, fiscal conservatives have recognized the value that PBRA could have in finally helping to tame the scandalously over-budget, behind-schedule construction schemes in which governments too often become mired. Others, including progressives in Congress, support the concepts behind PBRA as a way to quickly rebuild schools and other “vertical infrastructure.”

Conclusion

A big, bold infrastructure package should certainly be on the agenda for the 117th Congress. However, going “big” and “bold” on a reauthorization package of surface transportation programs while going “smart” at the same time are not mutually exclusive decisions. There can be, and should be, a balance between

reform to the laws that already exist and what lawmakers want to do with the available revenue streams. 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 market incentives and innovation will enable the infrastructure needs of the United States to be met in a fiscally responsible manner.

About the Author

Thomas Aiello is a Policy and Government Affairs Manager with National Taxpayers Union.



*2021 National Taxpayers Union
122 C Street NW, Suite 650, Washington, DC 20001
ntu@ntu.org*