

Trump Transpo Plan Is Lofty On Goals, Light On Funding Fix

By Linda Chiem

Law360, New York (November 9, 2016, 2:39 AM EST) -- President-elect Donald Trump is expected to follow through on his pledge to push for a jobs plan that calls for the large-scale redevelopment of roads, bridges, highways and airports, but experts worry that his go-big-or-go-home approach doesn't address Congress' repeated refusals to provide long-term infrastructure funding.

During his unlikely, yet ultimately successful bid for the White House, the Republican businessman vowed to ramp up federal spending on transportation infrastructure. He called for investing as much as \$1 trillion on infrastructure over the next decade with a "deficit-neutral" plan that purportedly won't cost American taxpayers a dime while getting the private sector to shoulder a significant share of the costs.

Experts who spoke with Law360 prior to the election said it's encouraging that Trump is eager to create thousands of new jobs in construction, steel manufacturing and other sectors by building up transportation, water, telecommunications and energy infrastructure.

But experts worry that his focus on major projects does not address the need to coax Congress into crafting a stable funding fix for transportation upgrades after it has spent years pushing stopgap funding gimmicks.

"It is very difficult to extrapolate the position he's taken, but from his statements, his vision is a lot more traditional in terms of the transportation infrastructure. It's the things most people think of, and that's rebuilding highways, bridges and airports," said Fred R. Wagner, a partner with Beveridge & Diamond PC and the former chief counsel of the Federal Highway Administration. "His is a traditional viewpoint on what we build and what we need to repair and what citizens expect to see in their taxpayers' dollars. He's about big-deal megaprojects — they have that flavor to it."

Trump's 'America's Infrastructure First' Plan

Trump economic advisers, private equity investor Wilbur Ross and University of California-Irvine professor Peter Navarro, on Oct. 27 released their analysis of Trump's so-called "America's Infrastructure First" proposal, saying it will help make good on the president-elect's campaign promise to transform America's crumbling infrastructure into a golden opportunity for accelerated economic growth and rapid productivity gains.

The plan calls for financing \$1 trillion of infrastructure projects with an equity investment of approximately \$167 billion. To entice the private sector to get on board with putting up such a daunting sum for public-works projects, Trump is proposing that the government offer them tax credits totaling about 82 percent of that equity amount.

Those tax credits would be repaid out of the incremental tax revenues that would come from project construction. Those revenue streams would come from additional wage income and contractor profits, according to the Trump plan.

That \$1 trillion figure is a bump from Trump's earlier campaign pledge to spend at least "double" the \$275 billion that his Democratic opponent Hillary Clinton had vowed to invest in infrastructure over a five-year period. Clinton had also touted the creation of an infrastructure bank that would leverage its \$25 billion in funds to support up to an additional \$225 billion in direct loans, loan guarantees and other forms of credit enhancement. His economic advisers recently called Clinton's infrastructure plan "a fool's errand."

Trump's administration may very well take a different route on transportation policy than his Democratic predecessor's, experts say.

For example, President Barack Obama demonstrated a willingness to embrace public transit, bike paths and transit-oriented development, but Trump's approach to transportation might be viewed as being more traditional, encompassing filling potholes and smoothing out or expanding highways, sprucing up what he has described as "third-world airports" throughout the country and building the next generation of roads, bridges, railways, tunnels and seaports.

"It's traditional in that sense where there's not a lot of discussion or proposals for a more modern or forward-looking view of what building good 21st century transportation infrastructure could be, such as linking transit and communities and giving people alternative means of getting around," Wagner said.

Cutting Red Tape

But what experts say is promising for transportation stakeholders is Trump's desire to expedite the government approval process and mandatory environmental reviews, which can add years to project timelines.

"[Trump has] talked about cutting red tape, and there's been movement in the [Fixing America's Surface Transportation] Act and in the law before the FAST Act that aims to streamline project delivery, specifically environmental project approvals under the National Environmental Policy Act," said Susan Lent, a partner at Akin Gump Strauss Hauer & Feld LLP. Lent has previously served as counsel to the former House Subcommittee on Surface Transportation, which is now called the Subcommittee on Highways and Transit, as well as counsel for investigations and oversight for the House Transportation and Infrastructure Committee under then-chairman Bud Shuster.

Trump has described in broad terms his aims of providing maximum flexibility to the states to steer infrastructure projects, linking increases in spending to reforms that streamline permitting and approvals, improving project-delivery systems, cutting what he's described as wasteful spending on boondoggles and employing incentive-based contracting to ensure projects are on time and on budget.

His goal is to reverse the previous administration's policies that, according to Trump, have resulted in infrastructure projects across the U.S. being routinely delayed for years due to endless studies, layer upon layer of red tape, bureaucracy and lawsuits — with virtually no end in sight.

That could mean taking a step back from the federal government's long regulatory arm, experts say.

"Presumably a Trump presidency would ease some of the regulatory burden[s] that are affecting transportation companies, trucking in particular," said Prasad Sharma, a partner with Scopelitis Garvin Light Hanson & Feary PC.

No Long-Term Funding Fix

However, Trump hasn't yet come up with a remedy for what transportation stakeholders say is a far more pressing issue that's frequently caused gridlock in Congress: a permanent, long-term fix to replenishing the federal Highway Trust Fund that pays for surface transportation projects.

The fast-draining fund receives money from a federal fuel tax of 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel and related excise taxes. The gas tax is the single largest source of federal highway and surface transportation funding, adding around \$35 billion to the Highway Trust Fund each year.

But the tax has not been raised since 1993, and its ability to fund highway infrastructure repairs and upgrades has shrunk over time, leaving a hole of approximately \$15 billion each year that needs to be filled by other means. And lawmakers continually have to stave off the fund's insolvency with offsets, bailouts and general fund infusions.

"[He] will have to tackle the long-term funding scenario, because everyone is going to want long term stability of the transportation trust fund and are looking at the viability of the gas tax and what options we have for the future," Wagner said.

Bridging the Partisan Divide

Congress in December 2015 enacted the hard-fought Fixing America's Surface Transportation Act, or FAST Act, a five-year, \$305 billion funding reauthorization that pays for highway, bridge, rail, transit and other surface transportation improvement projects nationwide.

And with that key piece of legislation already in the bag, experts fear that there's little impetus for advancing a meaningful, long-term fix for overhauling the Highway Trust Fund, at least during Trump's administration.

"Where is the political will in Congress to do anything when everybody is focused is on one-term, one-time infusion of cash and continues to rely on the gas tax for the Highway Trust Fund?" Sharma said.

But transportation stakeholders, trade groups and politicians on both sides of the aisle almost overwhelmingly agree that infrastructure investment should be a top-priority item for the next administration. And despite the inherent difficulties in getting things done in the aftermath of a bitter and bruising election, experts say the push to update transportation infrastructure is one area where the parties could actually agree.

"The partisan divides are very much defined, but less so here," Wagner said. "This is one of the policy areas where there is the highest likelihood or greatest opportunity for collaboration between the parties after the election."

--Editing by Mark Lebetkin and Rebecca Flanagan.

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