A Peek Inside the Trump Infrastructure Plan: What Local Government Agencies Should Know

The State of the Union Address and a Leaked Memo Give the Insight We’ve Been Waiting For

In President Donald Trump’s first State of the Union Address last night, he touched on infrastructure by discussing a proposed plan to direct at least $1.5 trillion toward infrastructure investment over the next decade. To reach this total, federal funds will be partnered with state and local investment and, where appropriate, private investments, he said. Half the funds will be dedicated to new state and local investments.

The administration intends, furthermore, to empower state and local authorities to prioritize infrastructure projects based on their communities’ needs. Additionally, through an infrastructure plan, Trump seeks to eliminate redundancies and inefficiencies in the regulatory and permitting processes affecting infrastructure construction throughout the country, including reducing the federal permitting process to two years — at most. Trump stated that a quarter of the package will be dedicated to addressing rural infrastructure needs as determined by state and local leaders of those communities.

We know from the Address, and a leaked memo on infrastructure from the White House, that the plan will apply to surface transportation, airports, passenger rail, maritime and inland waterway ports, flood control, water supply, hydropower, water resources, drinking water facilities, storm water facilities, Brownfield and Superfund sites, and broadband and other high-speed data and communication conduits.

The Transformative Projects Program will provide an avenue to fund projects that the private sector is hesitant to get behind due to the risk involved in deploying new and innovative technologies. The funding will be provided for planning, construction, deployment and evaluation of demonstration trials. The Rural Infrastructure Program will encourage investment to enable movement of
freight, reliable transportation, broadband, water, water resources, and power and electricity.

With regard to water infrastructure, the memo suggests that financing would:

- Authorize a Clean Water State Revolving Fund for privately owned public-purpose treatment works,
- Expand EPA’s Water Infrastructure Finance and Innovation Act’s authorization to include flood mitigation, navigation and water supply,
- Eliminate the requirement under WIFIA for borrowers to be community water systems,
- Authorize Brownfield rehabilitation and clean-up of Superfund sites under WIFIA,
- Reduce rating agency opinions from two to one for all borrowers,
- Provide EPA authority to waive the springing lien in certain lending situations,
- Increase the base level of administrative funding authorized to ensure EPA has sufficient funding to operate the WIFIA program,
- Remove the restriction on the ability to reimburse costs incurred prior to a loan closing under WIFIA and
- Expand the WIFIA program to authorize eligibility for credit assistance for water systems acquisitions and restructurings.

The plan would also expand the Army Corps of Engineers’ authority to engage in long-term contracts and accept contributed and advanced funds; retain recreation user fees for operation and maintenance of public facilities; amend the Water Resources Redevelopment Act to allow for waiver of cost limits and expand WIFIA to include federal de-authorized water resource projects.

The infrastructure plan would increase the capacity of existing federal loan programs including TIFIA, WIFIA, USDA Rural Utilities Lending and the Railroad Rehabilitation and Improvement Financing. The plan would create two new funds: the Interior Maintenance Fund and the Federal Capital Financing Fund. The Interior Maintenance Fund is said to be made up of revenue from mineral and energy development on federal lands and waters. The Federal Capital Financing Fund will create a funding mechanism similar to a capital budget and establish a mandatory revolving fund to finance purchases of federally owned civilian real property. Lastly, the plan would amend the United States Code on Private Activity Bonds to allow for more categories of public-purpose infrastructure. By doing so, Trump hopes to encourage more private investment.

At this time, it is unclear when Congress will take up the plan. Additionally, how Trump’s vision will couple with Congress’ and the administrative agencies’ current direction is unknown. There are areas that agencies and Congress are already advancing policies on that would severely curtail local governments’ ability to contribute, particularly in the broadband space. For instance, the
FCC’s Broadband Deployment Advisory Committee’s recommendations, adopted last week, focus significant attention on limiting or eliminating the local role in broadband deployment. Finally, in a hearing Tuesday, the House Energy & Commerce Committee heard testimony about broadband infrastructure deployment, with industry voices arguing vehemently against local authority or participation. The FCC and Congress appear set on an industry-first path, while the administration favors a public-private partnership model.

In the coming days, Congress will show what appetite it has for taking up Trump’s call for an infrastructure plan, and how its vision may differ from his. It will be very important to monitor and engage with that process, both to share your community’s vision and needs for the future of infrastructure, and to ensure existing programs upon which you rely are preserved. Other interest groups will surely do the same, if they are not already, and local governments and special districts need to be active participants to protect their interests. Local public leaders must participate to ensure that the policies proposed will benefit and empower — rather than constrain and sideline — local governments and their constituencies.

To learn more about how your agency can prepare for — and be involved in shaping — the infrastructure plan, contact the authors of this Legislative Alert to the right in the firm’s Government Relations group, or your BB&K attorney.

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