ML STRATEGIES

Transportation & Infrastructure in the 116th Congress

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With the 2018 midterm elections meaning Washington will return to divided government next year, leaders in both parties will be looking to position themselves for the 2020 election, which is not as far away as it may seem. In some cases that will mean making clear the differences between the two parties. However, Republican and Democratic leaders on Capitol Hill and President Trump will also be looking for opportunities to demonstrate that they can do the work of governing. While many issues are going to be a battle for the next two years, transportation and infrastructure are areas where there are opportunities for bipartisanship.

At long last – An infrastructure package?

It is now almost expected that at the start of every Congress there is talk of Republicans and Democrats coming together to address the nation's crumbling infrastructure. Plans have been put forth, speeches given, press releases issued, but to date none have resulted in passage of an infrastructure package. But this time it could be different. Aside from the obvious need for action on infrastructure, there are political realities that point toward the possibility of something getting done in the 116th Congress. First, much of the groundwork has been laid with House and Senate Democrats and the Trump Administration putting forth infrastructure proposals in the 115th Congress. While those plans should be viewed as wish lists, they do give an indication of where congressional and executive branch priorities lie. Secondly, infrastructure is an issue which, in principle, has bipartisan support and could serve to demonstrate the ability to govern from Capitol Hill. For President Trump, who in the end sees himself as a builder, the clock is ticking on securing another big legislative win as he gears up to seek reelection in 2020. The President has already said that infrastructure is an area where he may be able to work with the incoming Democratic House majority. Incoming House Transportation & Infrastructure Committee Chairman Peter DeFazio (D-OR) has said he intends to push a $500 billion infrastructure plan with investments for highways and transit, airports, and water projects. Ambitiously, Rep. DeFazio has said he wants to see his plan approved by the House in the first half of 2019.

With that said, there are challenges ahead. Senate Minority Leader Chuck Schumer (D-NY) recently said that any infrastructure package should help the U.S. transition to a clean energy economy while addressing climate change. He sent a letter to President Trump with a list of proposed clean energy infrastructure policies that "can and should" be included in any infrastructure package, specifically calling for all projects built with public dollars to "enforce Davis-Bacon provisions to guarantee workers are paid prevailing wages; utilize project labor agreements (PLAs); be subject to 'Buy America' standards; and include community benefits agreements, 'local hire' and other provisions."

The annual "Infrastructure Week" on Capitol Hill is scheduled for May 13-20, 2019.

Some of the transportation and infrastructure issues we'll be watching, either as stand-alone measures or as part of an infrastructure package, include:

Highway Trust Fund (HTF): With increasingly fuel efficient automobiles and no increase in the gas tax since 1993, this primary source of funding for repair and maintenance of roads and bridges is on the verge of becoming insolvent in 2020 unless Congress acts. Funds from the general treasury have kept the HTF afloat with infusions of funding over the past decade but there is a growing reluctance to continue this practice. There are various proposals to remedy this situation, including the proposed Build America Fund which would impose a federal fuel usage fee as part of the price of wholesale transportation fuels collected at the terminal rack. The fee would be phased in at five cents per year over four years, indexed to both inflation and improvements in fuel efficiency, and have a 5% annual cap. Incoming House Transportation & Infrastructure Committee chairman Peter DeFazio (D-OR) plans to propose a national vehicle miles traveled (VMT) pilot program, which would allow taxpayers to opt in and then provide a refund for the estimated gas tax they would have paid. The concept of VMT is supported by many House Republicans, and a pilot program is currently underway in Rep. DeFazio's home state of Oregon. Senator Barrasso (R-WY), the chairman of the Senate Environment and Public Works Committee, which has jurisdiction over highway programs, and Senate Majority Leader Mitch McConnell (R-KY) have both strongly objected to an increase in the gas tax in the past, so we will be watching to see how they react to the expected proposal from House Democrats to raise the tax.

Surface Transportation Reauthorization: The current surface transportation bill, the Fixing America's Surface Transportation (FAST) Act, is set to expire at the end of 2020 having been signed into law by President Obama in 2015. The FAST Act authorized $305 billion over fiscal years 2016 through 2020 for highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology, and statistics programs. With the FAST Act becoming law with bipartisan cooperation, we anticipate that a reauthorization of surface transportation priorities will again advance in a bipartisan manner in the 116th Congress although there will be the usual partisan disagreements over funding levels.

Bonds: Supporters of advance refunding bonds will be looking for opportunities to revive this option, which allows a bond issuance to be paid off with another lower-interest bond issuance. This practice was terminated by language in the 2017 Tax Cuts and Jobs Act. Additionally, we'll be watching closely for any efforts to end the tax-exempt status of municipal bonds, which finance 75% of the nation's infrastructure projects, including highways, ports, bridges, airports, public utilities, and water and sewer facilities.

Water Resources Development Act (WRDA): Congress has not always met the requirement to reauthorize WRDA every two years, but has done so recently, passing legislation in 2014, 2016, and 2018. With WRDA up for reauthorization again in 2020, there is optimism that lawmakers will continue this streak of cooperation. The most recent water resources bill provides for investments in harbor, waterway, flood protection, and other water infrastructure priorities. The bill also included language for improvements to the nation's drinking water system, for promoting hydropower development, and for increasing transparency at the Federal Energy Regulatory Commission.

Autonomous Vehicles: The 115th Congress has very nearly approved the first-ever legislation aimed at autonomous vehicles (AVs). The House of Representatives approved by voice vote the SELF DRIVE Act while the Senate Commerce Committee unanimously approved the AV START Act. With broad bipartisan support there has been hope throughout the 115th Congress that there would be final enacted legislation; however, following a number of highly publicized crashes involving self-driving vehicles, five Democratic senators placed a hold on the Senate bill in March 2018 over concerns about preempting state and local safety regulations. There have been ongoing talks to address concerns, but finding consensus on moving forward has proven difficult. Senate Commerce Committee chairman John Thune (R-SD), the sponsor of the AV START Act, has said recently that he intends to seek inclusion of the legislation in the year-end spending bill to be passed before the current continuing resolution funding much of the federal government ends on December 21, 2018 but has acknowledged that final passage this year is a long shot, likely leaving it for the 116th Congress.

Committee Leadership in the 116th Congress

Jurisdiction for transportation and infrastructure is shared across several committees in the House and Senate.

The incoming chairman of the House Transportation and Infrastructure Committee is Rep. Peter DeFazio (D-OR), with Rep. Sam Graves (R-MO) selected as the top Republican for the committee.

Rep. Richie Neal (D-MA), current ranking member of the House Ways & Means Committee, will take over as chairman with current chairman Kevin Brady (R-TX) remaining as the top Republican on the committee.

At House Energy & Commerce, Rep. Frank Pallone (D-NJ), the current ranking member, will become chairman with Rep. Greg Walden (R-OR) moving from chairman to ranking member.

The Senate Commerce, Science &Transportation Committee will see all new leadership in the next Congress with Sen. John Thune (R-SD) giving up the chairmanship to become Majority Whip. Sen. Roger Wicker (R-MS) will take over as chairman. Sen. Bill Nelson (D-FL), the current ranking member, was defeated for reelection opening the way for Sen. Maria Cantwell (D-WA) to take the top Democratic post at the committee.

Sen. John Barrasso (R-WY) and Sen. Tom Carper (D-DE) will continue to lead the Senate Environment & Public Works Committee as chairman and ranking member.

The Senate Finance Committee will have a new chairman in Sen. Chuck Grassley (R-IA), while the current ranking member Sen. Ron Wyden (D-OR) will continue as the top Democrat at the committee.

Sen. Mike Crapo (R-ID) and Sen. Sherrod Brown (D-OH) will continue to serve as chairman and ranking member of the Senate Banking, Housing & Urban Development Committee.

The Senate Energy & Natural Resources Committee will see Sen. Lisa Murkowski (R-AK) remaining as chair, with Sen. Joe Manchin (D-WV) taking over as ranking member.

Authors