TRANSPORTATION AND INFRASTRUCTURE

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION. The Federal Aviation Administration and its programs have been operating on a short-term authorization which expires on March 31, 2018. The House FAA reauthorization bill pushed through the Transportation and Infrastructure Committee by its Chairman, Congressman Bill Shuster (R-PA) last year, contains a controversial proposal to privatize the nation's air traffic control system. The bill has been stalled for months and has not been able to garner enough support to bring to the House floor, with opposition from both Democrats and Republicans. The Senate's proposal, reported out of the Senate Commerce, Science and Transportation Committee this past summer, also has not seen floor action. While it does not include the privatization plan for air traffic, it includes a provision to make pilot training hours more flexible, which has garnered controversy and threatened its passage. Both provisions threaten the ability of both chambers to arrive at a multi-year reauthorization of the FAA by the end of March. Chairman Thune has indicated a willingness to consider dropping the pilot training proposal to move the bill forward. Chairman Shuster just announced he will not run for re-election to focus on shepherding an infrastructure proposal through the House this year. This may be a sign he is willing to be more flexible on the privatization proposal. Unless both Chairmen would decide to drop the two provisions, another extension will be necessary. The FAA bill could also be included in consideration of a broader infrastructure package.

PRESIDENT'S INFRASTRUCTURE PLAN. The administration's infrastructure initiative is the third plank of his top three priorities, after health care reform and tax reform. It is expected to be a central theme of his State of the Union message on January 30th. The administration will be releasing a document of "principles" rather than specific legislation. Parameters of the plan have been coming out over the last year.

The plan will be composed of a combination of significant permitting and environmental streamlining reforms and $200 billion in federal dollars over ten years, which the administration will tout as leveraging an additional $800 billion for a total of $1 trillion in infrastructure investment over ten years. The plan envisions broad eligibility for funding not only for traditional transportation initiatives such as roads, bridges, transit, aviation, rail, ports, harbors, but also pipelines, wastewater treatment systems, drinking water, electric transmission grids, rural broadband and veterans' hospitals. The proposal would largely leave the type of infrastructure to be funded up to the recipients of funds rather than be divided at the federal level. No additional revenue raisers will be proposed, but the $200 billion would be proposed to be offset with federal program cuts which would be proposed in the FY 19 budget submitted in February. The plan will reportedly not address a long-term funding rescue for the largest federal infrastructure program, the Highway Trust Fund, which funds roads, bridges and transit systems. The Highway Trust Fund has been bailed out of multiple bankruptcy cliffs with a patchwork of deposits from the General Treasury over the last ten years and is facing another major cliff in two years.

The plan envisions the $200 billion being distributed via three major buckets:

1. **General Incentive Program:** 50% of the funds would be distributed under a formula for incentive grants on a 20% Federal/80% State, local and private investment cost share basis. This approach would primarily

benefit urban/suburban communities where alternative funding streams would be more likely to be available. This program relies heavily on public private partnerships to utilize federal dollars as primarily incentive money to complete majority investments by state, locals and the private sector. Projects would be prioritized based on levels of non-federal investment in the project. The idea is to reward projects with more skin in the game. Asset recycling would be a major feature of the plan. This model was used in Australia for a limited time to attract private money toward public works and involved leasing or selling existing public infrastructure to private partners and using the lease or sale proceeds to fund new projects. The concept is to turn an asset into cash and have a bonus payment from the government to do so. The administration has denied that there are “lists” of projects it wants funded.

2. **Rural Formula Grant Program:** 25% of the funding would be utilized for grants for rural infrastructure projects, perhaps with more traditional majority Federal cost share basis or even 100%. This is to satisfy rural State concerns that these areas do not have the same capabilities to raise non-Federal or private funds as urban areas do. The proposal would specify the thresholds for “rural” and “infrastructure project” to prevent misuse at the state level, but the concept is that states are more capable of identifying rural communities’ infrastructure needs than the federal government. There is some thought that the proposal will “defederalize” the federal dollars once they are handed over to the states to offer more flexibility from a plethora of laws and regulations applying to Federal funds, which is raising concerns amongst labor about whether prevailing wage laws would apply to these projects. The White House believes labor may support this in exchange for a funding influx and job opportunities. The rural funding may be administered by the Department of Agriculture.

3. **Transformative Projects Program:** 25% of the funding would fund big vision “moonshot type” projects that would not be able to get off the ground without a federal push. It would fund projects that require a higher federal government buy-in, including use of the federal lending and credit programs like TIFIA, WIFIA, and RRIF and expanding eligibility requirements for those programs to accommodate these projects. Elon Musk’s tunneling projects are often cited as an example of what is envisioned being funded under this umbrella. The transformative projects program would be administered by the Department of Commerce.

In addition to funding, the administration is relying heavily on proposed changes to permitting and regulatory streamlining to get projects through federal approval faster. This is referred to as the “10 years to 2 years/One Federal Decision” part of the proposal. The White House has indicated in briefings that they believe the permitting proposals will achieve a whopping $3.6 trillion in cost savings from reducing significant delays. Some of these have already been rolled out in Executive Orders; some will require additional legislation. The proposal will also include some workforce development provisions such as opening Pell Grant eligibility for other trades that would impact infrastructure-related fields.

Reaction from Capitol Hill infrastructure leaders on broad strokes of the plan thus far has been mixed. Most Democrats have already knocked the plan for the federal funding as being too little, budget cuts as offsets, lack of a proposal for addressing the Highway Trust Fund financial crisis and over-reliance on private sector funding. Some Republican leaders have been less vocal but still relatively tepid about the plan, concerned about the lack of revenue raisers, lack of an honest proposal to address the Highway Trust Fund issue and concern that the plan is a devolutionary approach putting more burden on states, localities and the private sector. Conservatives on the Republican side are also wary of another large spending initiative following a tax reform bill not fully paid for, disaster bills larger than expected and impending spending negotiations on FY 18 government funding. One thing the President and Congressional leaders are agreeing on is that, unlike the health care reform and tax reform efforts, the infrastructure initiative will be pursued as a bipartisan one from the start, an acknowledgement that Democrats will be needed to get it across the finish line.

Autonomous Vehicle Legislation. The next big thing in transportation, autonomous vehicles, is also on track for consideration by Congress in 2018. The House passed a bill, the SELF DRIVE Act, on personal autonomous vehicles on a bipartisan basis in September. The bill gives the Federal government, through the National Highway Traffic Safety Administration (NHTSA), exclusive authority to regulate vehicle design, construction, performance and safety the way it currently does regular cars, without dictating too many specifics as the technology is still in development. The bill is designed to create preemption from the 20-or-so State laws that have cropped up attempting to regulate AVs. The bill requires NHTSA to issue rules within two years on what car companies must submit to be certified as safe and their privacy plans with consumer information collected from autonomous vehicles. NHTSA will also have to issue a plethora of exemptions from current federal motor vehicle safety standards to accommodate the changes that autonomous vehicles create. The Senate also has a similar AV bill, the AV START Act, that cleared the Senate Commerce, Science and Transportation Committee in October, but is still facing challenges to floor consideration. However, given the private sector is way ahead of the Congress on these issues, we expect the bills to be reconciled soon and signed into law. After that, we expect the Congress to consider legislation addressing issues surrounding autonomous commercial motor vehicles. Teamsters opposition kept trucks out of the first round of legislation out of concern for driver jobs, but the rapid technology development will drive this debate as well.

For Questions or More Information Contact:

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