

WILL DIVIDED GOVERNMENT PROVIDE THE MAGIC POTION TO ENACT A FUNDED INFRASTRUCTURE BILL?

By: [Becky Weber](#)

Divided government has arrived once again in Washington. Democrats have retaken control of the House, gaining 40 seats to have a split of 235-200. Republicans have retained the Senate with a final split of 53-47. President Trump is entering the last two years of his first term. With this backdrop, infrastructure is back on the table. With Congress managing to enact multi-year aviation and water resources bills this year, the focus will largely be on the nation's largest infrastructure network; its critically important highways, roads, bridges, and transit systems; and finding a stable, long-term funding mechanism to maintain and improve them. Let's look at how the table is set.

President Trump's infrastructure proposal released last year, which largely relied on private sector investment and leveraging, fell flat in both parties and went nowhere. The primary White House architects of that proposal have since departed. President Trump continues to talk about infrastructure as one of his top priorities and has personally never been as opposed to robust public funding as his staff.

NAMES TO KNOW IN INFRASTRUCTURE

House



Peter DeFazio

Incoming Chairman, T&I Committee



Richie Neal

Incoming Chairman, W&M Committee



Sam Graves

Incoming Ranking Member, T&I Committee



Kevin Brady

Ranking Member, W&M Committee

Democratic leaders of the House are indicating that a strong and sufficient publicly funded infrastructure bill will be a top priority, perhaps right out of the gate in January. The incoming Chair-elect of the House Transportation and Infrastructure Committee, Congressman Peter DeFazio (D-OR), has spoken broadly about a \$500 million plan and has already spoken to White House staff about it. Likely Speaker of the House Nancy Pelosi (D-CA) has also voiced support for infrastructure being a priority. Pelosi went so far as

to voice support for a \$1.5 trillion plan to sway one of her detractors for the Speakership to her side. Congressman Earl Blumenauer (D-OR), a fierce advocate for infrastructure (particularly alternative options for walking and biking) is advocating for creation of a new Subcommittee on the House Ways and Means Committee to focus on infrastructure finance. This idea for a new Subcommittee is also supported by Congressman DeFazio. Since revenue is always the stumbling block, the possibility of a new Subcommittee to provide focus on revenue is viewed as encouraging.

On the Republican side, the departure of Speaker Ryan (R-WI) from leadership, who was never a strong supporter of infrastructure legislation, eliminates a barrier. Incoming Minority Leader Kevin McCarthy (R-CA) has stated he wants to work with Democrats to find common ground on infrastructure. Likely Ranking Member of the House Transportation and Infrastructure Committee Congressman Sam Graves (R-MO) also wants to make infrastructure a top priority.

On the Senate side, Majority Leader McConnell (R-KY) said the day after the election that infrastructure, healthcare, and confirming judges would be top priorities on the Senate agenda and believed infrastructure was an area he and Leader Pelosi could work together in a bipartisan fashion. Senate

Minority Leader Chuck Schumer (D-NY) has always been supportive of a publicly funded infrastructure bill and unveiled a \$1 trillion plan advanced by Senate Democrats in March of this year.

The biggest trigger that could force Congress' hand to act on infrastructure in the next Congress is the expiration of the Fixing America's Surface Transportation Act (FAST Act) in October of 2020 and the projected bankruptcy of the Highway Trust Fund shortly thereafter. In the history of federal surface transportation programs, Congress has never let them expire. Over the last decade it has bailed out the trust fund several times with an influx of general treasury revenues from a variety of sources to keep funding levels from dipping due to the negative impact that would have on construction jobs and transportation projects across the country. The threat of bulldozers storming the national mall in protest has always proved effective.

In theory, the stars could be aligning with the combination of intent from leaders from all three branches and an impending fiscal cliff. However, it would be hard to find too many willing to bet on success yet, because the poison in the potion remains what it has always been: where to find politically palatable new revenue?

It's worth looking at the brutal facts: with deficits going up, deficit spending from the General Treasury in \$500 billion - \$1 trillion ranges is not impossible but very politically difficult. Just to maintain current FAST Act funding levels going forward would require an influx of an additional \$20 billion per year, every year. The situation is way beyond scrounging for coins buried in the Treasury couch. Even in Washington, \$20 billion a year is real money.

In terms of the federal fuel tax, this need would translate into an immediate increase in the fuel tax by 12 cents per gallon. Fuel tax politics at the federal level are akin to the land-mine laden roads of Afghanistan. The federal fuel tax has not been raised for 26 years, and over the last ten, greater fuel efficiencies, alternative fuels and simple inflation have served to reduce overall gas tax receipts such that they no longer fully support current spending levels. Meanwhile, the nation's infrastructure is in terrible shape and needs are outstripping resources at every government level. The last infrastructure report card from the American Society of Civil Engineers rated American infrastructure a dismal D+, negatively impacting competitiveness and economic productivity.

Before President Trump issued his infrastructure plan, he told Republican transportation leaders he would consider supporting a federal fuel tax increase but was pulled back by his own staff and Republican leadership within hours of the statement. Most Democrats would generally

NAMES TO KNOW IN INFRASTRUCTURE
Senate

 John Barrasso <i>Chairman, EPW Committee</i>	 Roger Wicker <i>Incoming Chairman, Commerce Committee</i>	 Michael Crapo <i>Chairman, Banking Committee</i>	 Chuck Grassley <i>Incoming Chairman, Finance Committee</i>
 Tom Carper <i>Ranking Member, EPW Committee</i>	 TBD <i>Incoming Ranking Member, Commerce Committee</i>	 Sherrod Brown <i>Ranking Member, Banking Committee</i>	 Ron Wyden <i>Ranking Member, Finance Committee</i>

be more supportive of a fuel tax increase, but there is still political trepidation among their ranks. Whether the President would go along and cut a deal with them in opposition to his own party is uncertain, as well as whether it could get through a Republican Senate. Current House Transportation and Infrastructure Chairman Bill Shuster (R-PA) floated a federal fuel tax increase proposal this summer but only after he had announced his retirement. However, his likely successor as Ranking Member of the House Transportation and Infrastructure Committee, Congressman Sam Graves (R-MO), is an ardent opponent of federal fuel tax increases.

Democrats have floated rolling back tax reform in order to pay for infrastructure which will be a non-starter with the White House, House Republicans, and the Senate. Chair-elect DeFazio and Ranking Member-elect Graves are both supporters of Vehicle Miles Travelled (VMT) funding mechanisms. Oregon is a state that has implemented VMT pilot programs successfully. Most transportation policy thought leaders have advanced VMT as the only viable alternative to the fuel tax as a mechanism for funding the Highway Trust Fund for over 15 years. However, even if directed in legislation today, a fully operational federal VMT program for the entire nation and all vehicles could not be implemented for at least a decade, so interim revenue measures would have to be identified for the short term.

While Majority Leader McConnell has stated he's willing to work with Pelosi on infrastructure, he also said recently that "Republicans are not interested in a \$900 billion stimulus." Senate Environment and Public Works Chairman John Barrasso (R-WY) is holding a surface transportation needs hearing this week to kick things off early. He has historically been hesitant to support a fuel tax increase however.

It's also worth noting that the 2020 presidential election is already underway and the biggest trigger for action on infrastructure arrives a month before Election Day 2020. While it's always possible to enact it in 2019, history shows Congress acts best when it's about to fall off a cliff, not when it has miles to go before it reaches a cliff. The history of passing big ticket legislation in the heat of a presidential election isn't promising either.

The industries invested in finding a solution have been growing in the last decade beyond the core constituencies of construction, labor, trucking, governors and local elected officials. Joining the chorus and adding significant new voices are manufacturers and shippers of all stripes, retailers, tourism interests and others, who see the crumbling infrastructure affecting their bottom lines. Will these interests, the new Congress and the president be able to come together to overcome the history of multiple presidents and Congresses of both parties that have failed to arrive at the elusive magic potion to resolve our infrastructure problems? Many horny toads lie in wait, ready to hop in and spoil the brew, but there is still plenty of optimism in the air that Congress could actually come together in a bipartisan way to resolve one of the country's most pressing problems.

