Client Alert

Chapman and Cutler LLP
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CURRENT ISSUES RELEVANT TO OUR CLIENTS JUNE 30, 2011

New Proposals for a National Infrastructure Bank

There is a direct correlation between the quality of a nation's infrastructure and its productivity and competitiveness in the global market place.[1] But American infrastructure systems are in jeopardy due to decades of population growth paired with underinvestment in new systems, limited funding for maintenance, and a general lack of long-term planning.

The American Society of Civil Engineers gives the current condition of US infrastructure an overall grade of "D", and they estimate that $2.2 trillion of investment is needed over the next five years to bring our infrastructure up to adequate condition.[2] Likewise, the National Surface Transportation Policy and Revenue Study Commission recently concluded that $225 million annual investment is needed from all sources for the next 50 years to upgrade the US surface transportation system to a state of "good" repair and to create a more advanced system capable of withstanding 21st century demand.[3]

While politicians, analysts, and academia all seem to agree that America needs to increase its investment in infrastructure, the funding challenges associated with such investments have also increased as we grapple with the need to cut both federal and state deficits. One funding solution offered by the White House is the creation of a national infrastructure bank (NIB), and it seems to be gathering steam as three new legislative proposals to create NIBs have been introduced in Congress.

What is an NIB?

In general terms, an infrastructure bank is a quasi-public entity that "balance[s] the rate-of-return priorities of a bank with the policy goals of a federal agency".[4] The basic idea is that the federal government would establish an NIB, provide it with seed capital via initial appropriations, and authorize it to provide financing for various types of infrastructure projects alongside other governmental entities and private sources of capital. An NIB would be expected to operate so that, over time, it would become self-financing.

This type of bank is not unprecedented. The US Congress has mulled the idea for more than 20 years, many US states have already established infrastructure banks at the state level, and several of our international competitors have already implemented national and multinational development and infrastructure banks, including Europe, Brazil, China, India, the UK, and Germany.[5]

Current US Proposals

A comparative overview of the NIB proposals currently pending in Washington can be found in the chart on the next page.

More to Come…

Client feedback received at our recent C&C University forum[6] indicates that there is plenty of private sector interest and capital looking to be invested in infrastructure projects. Thus, an infrastructure bank that has the ability to leverage private funding for infrastructure sounds like a winning solution. Stay tuned for future discussions on the pros and cons and politics of NIBs and public private partnerships generally, along with updates on pending legislative proposals and case studies.

	White House FY 2012 Budget	S. 652 (Kerry)	H.R. 402 (DeLauro)	S. 936 (Rockefeller)
Type of Entity	***National Infrastructure Bank*** Supervised by DOT Current TIFIA program would be folded in *Otherwise very few details provided*	***Infrastructure Financing Authority*** New corporation wholly owned by federal government Supervised by Secretary of Treasury	***Infrastructure Development Bank*** New corporation wholly owned by federal government Supervised by Secretary of Treasury 15-year charter Authorized to borrow funds and issue bonds and other non-voting debt securities but NO full faith and credit	***Infrastructure Investment Fund*** New program authorizing creation of Investment Fund that provides credit assistance Supervised by Department of Transportation but has board of directors and independent advisory board Required to adopt operating and investing criteria and publish a Prospectus outlining criteria for selecting projects and methodology for qualification scoring
Total Funding Commitment	$30 billion over six years for infrastructure projects Part of a $556 billion six-year surface transportation funding authorization proposal	$10 billion initial appropriation; admin costs and credit subsidies funded with user fees and risk premiums Max authorized commitments: Years 1-2: $10 billion Years 3-9: $20 billion After: $50 billion/year	$5 billion annual appropriation for each of 2012-2016 (equaling 10% of total capital) 90% of total capital to be in the form of callable subscriptions Max authorized commitments equal to 250% of total subscribed capital	$5 billion annual appropriation for each of 2012-2013 Additional $600 million for each of 2010-2013 authorized for assistance in form of national infrastructure grants

	White House FY 2012 Budget	S. 652 (Kerry)	H.R. 402 (DeLauro)	S. 936 (Rockefeller)
Types and Terms of Investments	▪ Loans ▪ Guarantees ▪ Grants *Few details provided as to terms for investment*	▪ Loans ▪ Guarantees ▪ No refinancings for existing projects *Extensive details provided for investment, including: **amount:** up to lesser of 50% of project costs if investment is investment grade or amount of most senior debt (if not); **repayment:** maximum 35 year term; and **security:** dedicated revenue stream*	▪ Loans ▪ Guarantees *Few details provided as to terms for investment*	▪ Loans ▪ Guarantees *Some details on terms of investments specified; rest to be covered in individual investment plans for each project*
Eligible Project and Recipient Types	▪ Transportation	▪ Transportation ▪ Water ▪ Energy Clear public benefit (no private use or purpose, but PPPs ok) *Minimum $100 million project costs ($25 million rural)*	▪ Transportation ▪ Environment ▪ Energy ▪ Telecom	▪ Transportation Recipients must be governmental entities or private entities with governmental entity co-sponsor *Minimum $50 million project costs ($10 million rural)* *30% or more of project costs to be funded from other sources*
New vs Existing Projects	unspecified	▪ New projects ▪ Repairs ▪ Alterations	unspecified	▪ New projects ▪ Improvements

	White House FY 2012 Budget	S. 652 (Kerry)	H.R. 402 (DeLauro)	S. 936 (Rockefeller)
Project Funding Priorities	Project comparison analysis will be used to prioritize funding based on maximizing value for taxpayers	National or regional economic growth Job creation Assistance with reduced costs, speed implementation, mobilize participation by others Maximize private investment for public benefit Mitigate environmental concerns Geographic and project type diversity	Very similar to S. 652 Transportation projects should reduce carbon emissions and congestion Environmental projects should reduce pollution or have public health benefit Energy projects should develop smart grid, enhance energy efficiency, reduce carbon emissions Telecom projects should expand / improve broadband and wireless in rural and disadvantaged communities	Improve economic output, productivity, or competitiveness Overcome funding barriers due to multi-jurisdiction or mode of transport barriers

1 World Economic Forum. "The Global Competitiveness Report 2010-2011." Geneva, Switzerland 2010. http://www.weforum.org/issues/global-competitiveness

2 American Society of Civil Engineers. "2009 Report Card for America's Infrastructure." March 25, 2009. http://asce.org/reportcard

3 National Surface Transportation Policy and Revenue Study Commission. "Transportation for Tomorrow." December 2007. http://transportationfortomorrow.com/final_report/index.htm

4 *Hearing on Infrastructure Banks*, 111th Cong. (2010) (statement of Robert Puentes, Senior Fellow, Brookings Institution).

5 Urban Land Institute and Ernst & Young. "Infrastructure 2011: A Strategic Priority." Washington, D.C.: 2011. http://www.ey.com/Publication/vwLUAssets/Real_Estate_Infrastructure_2011/$FILE/Real Estate Infrastructure 2011.pdf

6 Held by Chapman and Cutler LLP on June 15, 2011, in Chicago, Illinois

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