

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

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MEMORANDUM

February 25, 2018

To: Subcommittee on Energy Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing on “State of the Nation’s Energy Infrastructure”

On **Tuesday, February 27, 2018, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Energy will hold a hearing entitled “State of the Nation’s Energy Infrastructure.”

I. THE TRUMP ADMINISTRATION AND INFRASTRUCTURE

President Trump’s fiscal year (FY) 2019 Budget requests \$200 billion of federal investment for infrastructure.¹ The same budget request would significantly cut some programs and eliminate other critically needed and important programs that fund and directly support U.S. infrastructure development and maintenance.²

On February 12, 2018, the Administration released “Building a Stronger America: President Donald J. Trump’s American Infrastructure Initiative.”³ The \$220 billion federal plan proposes to address the nation’s aging infrastructure by leveraging local, state, and private

¹ The Office of Management and Budget, *An American Budget – President’s Budget FY 2019*, at 17-18 (www.whitehouse.gov/omb/budget/) (accessed Feb. 23, 2018).

² The Office of Management and Budget, *An American Budget – Major Savings and Reforms*, (www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf) (accessed Feb. 23, 2018).

³ The White House, *Legislative Outline for Rebuilding Infrastructure in America*, (www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf) (accessed Feb. 23, 2018).

dollars in an effort to generate \$1.5 trillion in new infrastructure investment over 10 years. The three-part proposal establishes new funding and financing mechanisms for infrastructure projects, curtails environmental reviews, and addresses the Administration's workforce development priorities. However, the plan does not include specifics regarding energy infrastructure within the Committee's jurisdiction.

A. Funding Mechanisms

The Infrastructure Incentives Program would be administered by the Department of Transportation (DOT), United States Army Corps of Engineers (USACE), and the Environmental Protection Agency (EPA). State and local governments would be expected to apply for grants under terms, conditions, and criteria set by the lead agency of jurisdiction. State and local governments would have to submit evidence as to how non-federal revenue will be secured for projects, and to highlight how the project will enhance economic and social returns on investment. States awarded grants under this new program are prohibited from receiving more than ten percent of total grant funds; 80 percent of new revenue for infrastructure projects must come from non-federal sources.⁴ This cap on federal assistance could seriously diminish the appeal of these grants to a limited number of states, localities and more well-off and prosperous areas.

The Rural Infrastructure Program places an emphasis on projects with a focus on enhancing private sector productivity. Eighty percent of funds would not be need-based but rather distributed as formula-based block grants. The formula measures rural areas and population but does not gather information about, or adequately account for specific need. Only the remaining 20 percent of funds would be offered as performance grants. To be eligible for performance grants, states would be expected to publish a Rural Infrastructure Investment Plan (RIIP) detailing non-federal streams of funding and how federal dollars will be leveraged. Tribes and U.S. Territories would also be eligible for rural infrastructure funds. However, the proposal does not include eligibility requirements details or the exact dollar amounts dedicated to tribal and territorial projects.⁵

Administered by the Department of Commerce, the Transformative Projects Program would promote projects that are divergent from traditional infrastructure and present a greater financial risk. The program would make funds available under three tracks, 30 percent for the demonstration track, 50 percent dedicated to the project planning track, and 80 percent for the capital construction track. The program further requires applicants to enter into a partnership agreement with the government and commit to a value share arrangement.⁶

⁴ *The White House, Legislative Outline for Rebuilding Infrastructure in America*, (www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf) (accessed Feb. 23, 2018).

⁵ *Id.*

⁶ *Id.*

B. Curtailement of Permitting Timelines and Environmental Protections

The National Environmental Policy Act (NEPA) requires federal agencies to assess and determine the environmental impacts of proposed infrastructure projects prior to granting construction permits. NEPA ensures the environmental impacts of a project are considered and avoided when possible, the public has an opportunity to offer their views and input, and that federal agencies operate in a systematic and transparent way when making permitting decisions.⁷ Proponents of regulatory “streamlining” often blame project delays on permitting requirements under NEPA. These claims have been repeatedly disproven, including the contention that NEPA requirements are the cause of infrastructure project delays.⁸ The Administration’s infrastructure proposal would establish a 21-month deadline for agencies to conduct a full environmental review of proposed projects. Additionally, the plan eliminates agency requirements to consider project alternatives if they are not “legally, technically, and economically feasible” for applicants.⁹ Applicants would no longer have to consider or pursue alternatives that would ensure environmental protections are secured, provided they explain their reasoning.¹⁰ Since a small fraction of projects require a full environmental impact statement, lack of adequate project funding is the largest contributor to these delays.¹¹

Since 2012, Congress has enacted three laws giving the administration tools to expedite the permitting process without sacrificing environmental protections. Some provisions of the Fixing America’s Surface Transportation (FAST) Act have yet to be fully implemented. Furthermore, the Trump Administration has not appointed an Executive Director of the Federal Permitting Improvement Steering Council (FPISC), which is tasked with coordinating and

⁷ Council on Environmental Quality, *National Environmental Policy Act*, (ceq.doe.gov/) (accessed Feb. 21, 2018).

⁸ Center for American Progress, *Debunking the False Claims of Environmental Review Opponents* (May 3, 2017) (cdn.americanprogress.org/content/uploads/2017/05/02115452/DebunkingEnvironmentalReviewFalseClaims-brief1.pdf); Congressional Research Service, *Memo to House Committee on Transportation and Infrastructure on Questions regarding the report Two Years Not Ten Years: Redesigning Infrastructure Approvals* (Jun. 7, 2017).

⁹ See Note 3.

¹⁰ *Id.*

¹¹ Department of the Treasury, *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance* (Fall 2016) (www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf); House Committee on Energy and Commerce, *Hearing on Closing the Digital Divide: Broadband Infrastructure Solutions*, Testimony of Natural Resources Defense Council Legislative Director Scott Slesinger, 115th Cong. (Jan. 30, 2018) (democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Slesinger-CAT-Hrg-on-Closing-the-Digital-Divide-Broadband-Infrastructure-Solutions-2018-01-30.pdf).

expediting federal permit reviews.¹² Implementing another round of regulatory “streamlining” while ignoring existing tools, only serves to undermine the environmental safeguards and transparency provisions of NEPA.

C. Workforce

The Administration’s proposal also offers provisions that would promote workforce development and expand educational programs to support related infrastructure developments. However, the plan does not detail a funding mechanism for the recommendations provided, which includes expansion of Pell Grant eligibility to short-term certification programs, reforming the Carl D. Perkins Career and Technical Education (CTE) program, and redistributing funds for the Federal Work Study program. Additionally, States which receive federal dollars for infrastructure projects would be required to accept workers who have out-of-state trade licenses and permits.¹³

II. CLEAN ENERGY INFRASTRUCTURE PROVISIONS OF H.R. 2479 - THE LIFT AMERICA ACT

Ranking Member Frank Pallone, Jr. (D-NJ) and the Democratic members of the Energy and Commerce Committee introduced H.R. 2479, the “Leading Infrastructure for Tomorrow’s America Act,” (LIFT America) on May 17, 2017. The bill’s five titles help fund and improve infrastructure across multiple Energy and Commerce jurisdictional industries and sectors, including secure and resilient broadband, drinking water infrastructure, clean energy infrastructure, brownfields redevelopment, and healthcare infrastructure. Title III of the LIFT America Act addresses clean energy infrastructure. Title III’s four subtitles are geared to address America’s contemporary and primary energy infrastructure challenges.

Subtitle A, Grid Security and Modernization, provides \$4 billion over five years for electric grid infrastructure, focused on grid modernization, security, resiliency, and efficiency. This section includes funding to establish a strategic transformer reserve, in order to speed up electric grid recovery following extreme weather events.

Subtitle B, Energy Efficient Infrastructure, includes several programs to cut energy usage, benefit consumers, and address climate change. It contains \$1.75 billion over five years for home and school energy efficiency retrofits. The subtitle reauthorizes the Diesel Emissions Reductions Act, providing \$1 billion over five years to reduce emissions from older vehicles. The subtitle also provides nearly \$400 million over five years in weatherization grants and programs to promote smart buildings and \$15 million for a pilot program to promote energy efficient water distribution systems.

¹² Center for American Progress, *President Trump’s Infrastructure Proposal Recklessly Undermines Environmental Laws* (Feb. 16, 2018) (www.americanprogress.org/issues/green/news/2018/02/16/446914/president-trumps-infrastructure-proposal-recklessly-undermines-environmental-laws).

¹³ See Note 3.

Subtitle C, Energy Supply Infrastructure, strengthens existing energy supply infrastructure and expands renewable energy infrastructure to increase climate resiliency and reduce greenhouse gases. This subtitle provides \$1.75 billion over five years in assistance for low income communities to support methane pipeline replacement, \$4 billion for improvements to the Strategic Petroleum Reserve to address environmental challenges, and \$1 billion to establish a Southeast Refined Products Reserve. It also provides \$2.25 billion over five years to create new grant programs for distributed energy systems and solar installations in low income and underserved communities.

Subtitle D provides \$850 million over five years to spur development of “Smart Communities” through technical assistance, grants, and training. It also authorizes the Department of Energy’s (DOE’s) proposed Cities, Counties, and Communities energy program to provide technical assistance and competitive grants for clean energy solutions in development and redevelopment efforts. The subtitle funds technical assistance from the national labs to cities and towns for Smart Community infrastructure and expands the Department of Commerce smart cities demonstration project to include small and medium cities and towns.

III. WITNESSES

The following witnesses have been invited to testify:

Jennifer Chen

Sustainable FERC Project Attorney
Natural Resources Defense Council

John Devine

Senior Vice President
HDR Inc.
On behalf of the National Hydropower Association

Dr. Brenda Hellyer

Chancellor
San Jacinto College

The Honorable Gary McCarthy

Mayor
City of Schenectady

Jim Ross

Director, Construction and Maintenance Department
International Brotherhood of Electrical Workers

Brian Slocum

Vice President, Operations
ITC Holdings Corporation