Key Considerations For Accessing Infrastructure Act Funding

By **James Voyles** (December 8, 2021)

James Voyles

Infrastructure spending is about to increase. This became a certainty with the passage on Nov. 15 of the Infrastructure Investment and Jobs Act.

This historic piece of bipartisan legislation will inject $1.2 trillion — $550 billion in newly appropriated funds — into the American economy over the next five years.

The Infrastructure Act's top-line takeaways include many items intended to build and repair U.S. infrastructure — and to meet President Joe Biden's economic, social and climate change goals. For instance, the act contains provisions such as:

- $110 billion to build and repair roads, bridges and other major infrastructure projects;
- $63 billion to the Federal Transit Authority to modernize public transit, reduce carbon emissions and invest in innovative programs;
- $100 million to the U.S. Department of Energy to invest in critical mineral development;
- $7.5 billion to build electric vehicle charging infrastructure nationwide;
- $55 billion to improve drinking water and replace lead pipes;
- $73 billion to upgrade power grids and deploy technologies such as nuclear and carbon capture; and
- $21 billion for environmental remediation.

Notably, this list only accounts for just over half of the new federal dollars authorized under the act. The questions presented are many, but in the end, with the passage of legislation providing for $1.2 trillion in infrastructure improvement, many are asking: What do we do with it all?

Fortunately, a number of agencies and industry associations have taken active measures to demystify — if not clarify — how Infrastructure Act funds will be put to use in the American economy. The aim of this article is to help states, municipalities, tribes and companies understand how to seek funds appropriated under the act, and put them to use to bring jobs and prosperity to communities.

Key considerations for Infrastructure Act funding include timing; appropriation versus authorization; understanding federal, state and local funding distributions; and the channels that the private sector needs to access to obtain funds.

But first, it is important to understand what the Infrastructure Act did from a federal budgetary perspective — and what still needs to occur before its funds can be sent out.

Before federal funds can be expended for any purpose, funds must be both authorized and appropriated by Congress. The Infrastructure Act authorized the federal government to spend monies detailed in the bill.

But Congress will need to pass an appropriations bill before Infrastructure Act funds can be issued by the U.S. Department of the Treasury. Fiscal year appropriations bills generally pass at the end of the calendar year, or are subject to what is referred to as a continuing resolution, which appropriates federal dollars under the previous year's spending authorizations.

Congress just passed a continuing resolution that will fund the federal government through Feb. 18, 2022, avoiding a government shutdown. The continuing resolution may delay certain funding allocations in the Infrastructure Act into 2022, but federal agencies will also need this time to implement the act's provisions.

The difference between congressional authorization and appropriation is important, because these legislative mechanisms affect the timelines upon which Infrastructure Act funds will leave the Treasury for their respective federal, state, local or tribal deployment destinations. Existing government spending programs will receive Infrastructure Act funds faster than programs that were created by the act.

A variety of factors — including an appropriations bill, the holiday season, regulatory timelines and Treasury operations — affect when governments and companies can expect act funding to become available. Given the scale of the enactment, the funds are likely to begin to flow sometime in the next three to 24 months, depending on the program.

To help the public further understand funding processes, governments and industry associations have released information that explains how Infrastructure Act funds will be divided and distributed under agency programs.

The Department of Energy, for example, has issued a fact sheet that details where $62 billion in act funds will be deployed throughout the department.[1] DOE funding will include investments in the clean energy supply chain, batteries, hydrogen, advanced recycling, critical minerals development, and manufacturing low to zero transportation technologies.

The U.S. Department of Transportation released a state-by-state fact sheet detailing the Infrastructure Act funds each state can expect to receive under the federal highway distribution formula; problems facing infrastructure in each state; and how act funds can fix or build new infrastructure in each jurisdiction.[2]

The Federal Highway Administration also recently launched an Infrastructure Act website as a one-stop shop for information about the act, and to issue requests for information from the public and other stakeholders to help the agency implement the act.[3]

As one example, Arizona has 132 bridges and over 3,193 miles of highway that the DOT deems to be in poor condition. These deficiencies have increased commute times by 11.1% since 2011, and driving on roads in need of repair has cost Arizona drivers $614 annually.

Based on the federal highway distribution formula, Arizona can expect to see approximately $5.3 billion from this particular subset of Infrastructure Act funds over the next five years — representing a nearly 29% increase in the state's federal highway aid on an annual basis.

Arizona — and every other state, municipality, tribe and company — will also have access to augmented funding under programs that include the Fixing America's Surface Transportation Act and others that modernize, improve and decarbonize public transportation; fund electric vehicle charging stations; improve rail and airport facilities; and fund the local and tribal Safe Streets for All initiative, among numerous others.

The American Association of State Highway and Transportation Officials has issued a state-by-state Infrastructure Act funding guide that may be a helpful resource for understanding how states can benefit from the act.[4] The American Public Transportation Association has also published two helpful resources: a public transit funding guide by program,[5] and a legislative guide to assist in navigating Infrastructure Act funding programs.[6]

It is important for states, municipalities, tribes and companies to use the above-referenced information to plan how Infrastructure Act funds can and should be deployed to have a maximum impact on economies, jobs and infrastructure.

Governments at all levels will need to study and prioritize which infrastructure projects are most in need of repairs; how funds can be deployed to expand infrastructure into underserved or congested communities; and how grant programs should be structured and staffed to efficiently distribute funds.

Companies should be actively involved in program development, request for proposal and grant processes at the federal, state, local and tribal levels, and be ready to either partner with governments, or position themselves to receive funding from Infrastructure Act programs.

Given the level of Infrastructure Act funds and funding programs available, governments and companies should be actively assessing:

- The benefits to be sought from the Infrastructure Act;
- Which funding programs will achieve the organization's goals;
- How to tie the benefits and goals to the identified funding programs;

- Public and private partners who are seeking the same outcomes; and

- Community support for identified projects.

Governments and businesses who pair these strategic planning steps with effective grant, government affairs, communications and legal strategies will be in the best position to receive the benefits Congress has authorized under the Infrastructure Act.

James Voyles is of counsel at Lewis Roca Rothgerber Christie LLP.

[1] https://www.energy.gov/articles/doe-fact-sheet-bipartisan-infrastructure-deal-will-deliver-american-workers-families-and-0.

[2] https://www.transportation.gov/briefing-room/usdot-releases-state-state-fact-sheets-highlighting-benefits-bipartisan.

[3] https://highways.dot.gov/newsroom/federal-highway-administration-unveils-infrastructure-investment-and-jobs-act-one-stop.

[4] https://policy.transportation.org/wp-content/uploads/sites/59/2021/08/IIJA-State-DOT-Benefits-2021-08-31-Update-PDF.pdf.

[5] https://www.apta.com/wp-content/uploads/Transit-Funding-APTA-IIJA-Funding-Table-Transit-Rail-08.02.2021.pdf.

[6] https://www.apta.com/advocacy-legislation-policy/legislative-updates-alerts/updates/senate-passes-the-infrastructure-investment-and-jobs-act/.