

Analysis: What will Joe Biden do about infrastructure?

As the former vice president prepares to move into the Oval Office, we consider what a Joe Biden presidency will mean for the US P3 market

It has often been said that when America sneezes, the world catches cold.

It's no surprise, then, that after a bitterly fought election contest, the world waited on tenterhooks as the winner of the presidential race came down to a handful of states and the almost interminable wait for votes to be counted. Even in the UK, one lawyer recently told us he had found it difficult to concentrate on his work during those days as the votes trickled in.



Now that there appears to be a winner, the question is: what will a Joe Biden presidency look like, and where will private finance fit into any infrastructure plans?

First and foremost, President-Elect Biden will need to try to bring together a deeply divided country. With outgoing President Donald Trump and many of his Republican supporters still making allegations of fraud and vote-rigging, that will be difficult.

However, it has long been recognized that one area of bipartisan agreement is infrastructure. Before the election, there was genuine hope that both sides could come together in the first year of a presidential term (regardless who was in the White House) to deliver a comprehensive infrastructure bill that would unlock private finance for a range of sectors.

Indeed, soon after polling day, House Speaker Nancy Pelosi suggested that an infrastructure bill might be something that she and her Republican counterparts could work on together. As Pelosi knows, bipartisan support will be vital, because the election also saw the Republicans retain control of the Senate, meaning that, for the time being at least, Democrat hopes of a clean sweep of House, Senate and Presidency have been scuppered.

Experts suggest bipartisan legislation is generally the only way to ensure that bills can stand the test of time – as Congressman Bill Schuster, former Chairman of the House Transportation & Infrastructure Committee and

now a senior policy advisor at law firm Squire Patton Boggs, **explained when discussing the future of the FAST Act earlier this year.**

“Biden and his transition team have indicated a desire to work with Congress in early 2021 to enact a large-scale infrastructure package,” points out an analysis report on the president-elect’s policies by law firm Squire Patton Boggs.

Joe Seliga, partner at Mayer Brown, agrees, but goes even further, suggesting the need for bipartisan agreement could increase the chances of P3s being utilized. “This could lead to opportunities to adopt legislation promoting private investment in infrastructure as a means of leveraging overall investment in infrastructure,” he says.

However, infrastructure advisory specialists at financial advisors BDO warn that progress may be slow. “Policy change is a complex and slow-moving process that requires compromise from both the president and Congress, meaning proposals made on the campaign trail are unlikely to look like what may eventually be signed into law,” they suggest.

Transportation has historically been the dominant hunting ground for P3s in the US, and the early signals here are promising. **Biden has appointed LA Metro chief executive Phillip Washington** to lead the transition team's Department of Transportation agency review team.

Washington’s appointment is significant, given his long association – and clear support for – innovative financing methods, including P3. He oversaw a \$2.2bn transit P3 in Denver, prior to his time in LA, and in his current role has been in charge of the Measure M program that has brought about a series of unsolicited P3 projects.

Beyond transportation, there is hope that a Biden administration will open the doors to other areas for P3 investment.

“Infrastructure investment is likely to be a significant area of interest in Covid-relief legislation and/or a separate infrastructure bill early in the administration,” says Seliga. “This could include legislation authorizing some type of asset recycling program, expansion of surface transportation private activity bonds, authorization of social infrastructure private activity bonds and enhancements to the TIFIA, WIFIA and RRIF programs.”

“Infrastructure investments that enhance America’s global competitiveness and innovative capacity, like broadband and smart cities, have wide bipartisan support, so may be among those that are greenlit in 2021,” add the BDO experts.

The Squire Patton Boggs analysis lists ‘traditional’ infrastructure such as roads, bridges and transit projects as likely to be a core part of Biden’s plans – but goes on to suggest these areas could be joined by “ports, airports, schools, broadband access, water infrastructure, and clean energy projects”.

Indeed, one of the most promising signals for the P3 industry on where Biden will take the infrastructure investment community can be seen from his energy policy. With a clear focus on “clean energy jobs”, the policy statement adds that his administration will “develop innovative financing mechanisms that leverage private sector dollars to maximize investment in the clean energy revolution”.

This suggests Biden may well be minded to move towards the types of infrastructure financing tools that Seligson mentions, but expanding them beyond their traditional boundaries of surface transportation and into the realm of green energy.

Before getting carried away with the potential areas where a Biden administration might spend its money, though, it's important to remember that the divided state of the country, and particularly Congress, mean there will be limits placed on the new president's ambitions.

"With President-Elect Biden likely facing a divided government, there will be limits on what he is able to get done," says the Squire Patton Boggs report. "However, his deep ties to the Senate and reputation for coalition-building among his former colleagues may help in constructing a package that can pass both a Democratic House and Republican Senate."

Whatever Biden does do on infrastructure, it seems likely there will be widespread support from the public for new investment. Figures from the American Road & Transportation Builders Association (ARTBA) found 94% of state and local ballot initiatives were approved by voters during the November 3 poll – one of which, in Texas, paved the way for a potential P3 scheme.

Clearly, the appetite is there from voters for new infrastructure investments to be delivered. It is now down to the politicians – hopefully corralled by the new president – to create the legislative backdrop to really open up the opportunities.

As the BDO team put it: "The election aside, it's a safe bet that there will be plenty of opportunities for the private sector to get involved in implementing public infrastructure works."

In the end, the amount of progress that Biden is able to make will come down to money. "How will Congress pay for such a bill, and what action will be taken to find a sustainable, long-term revenue source for the Highway Trust Fund?" ask the Squire Patton Boggs team.

"The current state of the economy and previous Covid-relief packages indicate a greater willingness by Congress to deficit spend on infrastructure as a next step in recovery from the pandemic; however, historically, surface transportation bills have been primarily user financed," they continue. "The House Ways and Means and the Senate Finance Committee are responsible for the revenue title of surface transportation reauthorization, and will have to work together to determine a solution."

Whichever way he turns, it seems certain that Biden will need to build consensus, make concessions and be willing to bargain.

But then, that's what politics is all about – and on infrastructure he at least has the head-start that all sides believe something needs to be done. If a comprehensive infrastructure package really is achievable in his first year in office, the sky is the limit for the P3 industry.

