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The Priority List

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Executive Summary

The cost of building infrastructure in America has become too high, but politics has gotten in the way of taking steps to reduce that cost. Rather than running into a wall of opposition, Congress should create a list of the most important and impressive infrastructural projects in America and pass reforms that apply to only these projects. Congress could then rely on

these projects' popularity to get support for otherwise difficult-to-pass reforms, including the creation of a federal team of expert civil servants to help states run projects, a revival of the Build America Bonds program, and relief from otherwise politically invulnerable regulations that increase costs.

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The construction of roads, bridges, trains, and other transportation infrastructure is so costly and time-consuming in the United States that, in those rare instances when a project is completed quickly, it makes national news. When a section of I-95 collapsed in Philadelphia in 2023, Governor Josh Shapiro of Pennsylvania declared it an official disaster and insisted on rebuilding right away.¹ His declaration temporarily suspended some burdensome regulations and permitting requirements.² The declaration, and the intense focus of federal, state, and local officials, drove the project forward at a remarkable pace. That stretch of I-95 reopened 12 days later, to the applause of local and national observers.³ The road was fully restored in less than a year.⁴

“Why can’t America do this for everything?” asked columnist Matthew Yglesias about the rapid reopening of I-95.⁵ US infrastructure construction is usually very, very slow.⁶ Even worse, a large and growing body of academic literature has shown that the costs of building roads and trains is much higher in America than in other developed countries and that these costs have increased dramatically over time.⁷

The academic literature identifies several hurdles to building transportation infrastructure in America quickly and cheaply. State and local governments build most transportation infrastructure but often

lack the capacity and incentives to plan big projects in a cost-effective manner.⁸ Projects are larded with expensive community benefits to mollify critics and neighborhood groups.⁹ Governments rely on giant private contractors to build projects but do not have the resources or know-how to sufficiently oversee contractors’ costs.¹⁰ Faceless bureaucracies, and not prominent officials, manage projects, making it hard for voters to punish anyone when costs get out of hand.¹¹ And a plethora of well-intentioned federal and state regulations—such as environmental review, labor requirements, and domestic procurement rules—slow the building process, skew planning priorities, require expensive mitigation efforts, increase input costs, and expose projects to the risk that they will be held up by litigation.¹²

In a perfect world, Congress and state legislatures would address these problems. But doing so has proved politically impossible. Onerous regulations are guarded by their entrenched supporters. Improving state capacity is a slog, with costs borne by a diffuse and distracted population of taxpayers. We need a second-best solution for reforming American infrastructure construction, one that can work in the real world.

Enter the “Priority List.” The Priority List would be a short list of infrastructure projects that Congress

deems nationally important. Congress would create a process and criteria for identifying such projects. Then, the secretary of transportation would identify a few prominent early-stage projects that fit Congress's criteria and ensure that each project is backed by state and local political actors willing to be held accountable for them. Congress would then vote on the secretary's list as a package under a "closed rule," following the example of the successful Base Realignment and Closure (BRAC) process.

Projects on the Priority List would be subject to different rules from ordinary infrastructure projects. The federal government would detail a team of experts to help project sponsors with planning and management, projects on the list would be exempt from certain regulations, and states and cities funding these projects would be allowed to use preferential financing tools. Pulling these important projects out of the morass of American infrastructure planning and providing them with resources and exemptions would allow them to get built more quickly and cost less.

But why would Congress agree to these changes when reform has long eluded it? The logic behind the Priority List is that it would allow reformers to take advantage of the biggest projects' prominence to change the politics of infrastructure delivery. The Priority List should consist of projects of large enough scope and significance that they can "stir men's blood," to channel Daniel Burnham, today's equivalents of the Golden Gate Bridge or the New York City subway system.¹³ The desire to get these important projects done would encourage members to vote for reforms they might otherwise oppose. Members of Congress who vote for the package would be declaring that building *these* projects is a priority over other policy goals and that they are willing to make some sacrifices to get them across the finish line.

To be more specific, projects on the Priority List would be treated differently from ordinary projects in some or all of the following ways:

1. **Surge of State Capacity.** The Department of Transportation (DOT) would hire a substantial

number of federal employees and then detail them to the state or local governments sponsoring projects on the Priority List. Researchers have argued that one major reason for projects' high costs is a shallow bench of transportation planning experts, particularly for complicated projects in smaller jurisdictions.¹⁴ If the federal government lent engineers and planners to state and local governments, these experts could help oversee the complex work contracted out to private engineering firms. Further, they would likely have expertise in advising state and local governments on best practices both nationally and internationally.¹⁵ The Priority List could build on the DOT's recently created Project Delivery Center of Excellence.¹⁶

2. **Cheaper Financing.** The American Recovery and Reinvestment Act of 2009 authorized a unique form of infrastructure financing: Build America Bonds (BABs). Normally, the federal government subsidizes state and local government borrowing by allowing state and local governments to issue tax-exempt municipal bonds, for which the interest is exempt from income taxes (allowing the bonds to carry lower interest rates).¹⁷ BABs were different; the federal government just gave cash grants to state and local governments that issued taxable municipal bonds to finance infrastructure investments.¹⁸ Because the subsidy did not come through a tax exemption, the bonds were attractive to a broader set of purchasers, particularly pension funds and foreign investors who do not pay US income taxes. This increased demand, combined with the subsidies, means that BABs can provide substantially cheaper financing for infrastructure projects. Congress should permit jurisdictions with projects on the Priority List to issue BABs. While there would be real systemic concerns if we were to replace the municipal bond tax exemption with BABs more broadly, that is not an issue here because BABs would be available for only a few important projects. BABs would not burden the federal

fisc; the cash subsidy is designed to equal the revenue the federal government loses from not taxing interest on ordinary municipal bonds. But BABs would make these projects cheaper for state and local governments.

3. **Regulatory Exemptions.** A more aggressive congressional intervention would be exempting Priority List projects from some regulations, including parts of the complex environmental review process, Buy America provisions, and prevailing wage standards. The secretary should indicate the necessary exemptions for each project in his proposed Priority List package to Congress. The idea is that the popularity of the package of important projects may allow Congress to enact some regulatory changes that would otherwise face fatal political challenges.

The Priority List has some potential downsides. Removing the biggest and most important projects from the ordinary process for approving infrastructure projects might reduce political pressure on Congress to improve the infrastructure delivery process more generally.

But the upsides outweigh the risks. The Priority List could help create more examples of successful infrastructure projects like rebuilding I-95. These examples would provide Congress and the public with information about the costs of regulations and low state capacity, paving the way for broader reforms.

Notably, the Priority List approach would not be the first time the federal government has prioritized key projects or suggested that big projects receive regulatory relief. Presidents Barack Obama and Donald Trump both provided regulatory relief for specific high-priority projects.¹⁹ Transportation financing bills have identified “Projects of National and Regional Significance” for special funding.²⁰ The Infrastructure Investment and Jobs Act of 2021 created a “Mega Grant” program that provides funding for “large, complex projects that are difficult to fund by other means and likely to generate national or regional economic, mobility, or safety benefits.”²¹ And the Biden administration proposed an institution

called “Infrastructure America,” modeled on examples from Australia, Britain, Canada, and New Zealand, to create a pipeline of the highest-priority projects.²² (Infrastructure Australia even has a set of projects it calls the Infrastructure Priority List.)²³

But Congress hasn’t used the prominence and political salience of high-profile projects as leverage to address the high costs of building infrastructure.

The rebuilding of I-95 tells us that America *can* build infrastructure quickly and well. While rebuilding a stretch of highway is undoubtedly easier than planning and developing new infrastructure,²⁴ Governor Shapiro’s success suggests that construction can happen quickly if a project is important enough, if leading politicians take responsibility, and if there is flexibility around regulations. We just need a process for creating more examples of infrastructure that is built quickly, well, and cheaply.

The Problem, Briefly

American transportation infrastructure costs too much to build.²⁵ Zachary Liscow and Leah Brooks have shown that the cost of highway construction is higher in the United States than elsewhere and that these costs have increased substantially over time.²⁶ Researchers at the New York University (NYU) Marron Institute of Urban Management and the Eno Center for Transportation have found that building train tracks and tunnels is much, much more costly in the United States than abroad.²⁷

These extraordinary costs can be largely explained by a few factors: regulations, planning, and political leadership. There is little evidence, on the other hand, that they are driven by external factors like material costs.

First, federal regulations impose direct and indirect costs on projects. Labor regulations and Buy America rules can directly increase the cost of hiring workers and buying supplies.²⁸ Probably more significant are the indirect costs caused by regulation-driven project modifications and delays. Liscow and Brooks argue that a major reason for the increases in roadbuilding costs over time is greater “citizen voice,” or the ability

of highly engaged groups of citizens to force governments to modify projects by lobbying or threatening litigation under environmental regulations like the National Environmental Policy Act (NEPA).²⁹ Relatedly, permitting requirements are a major driver of delays.³⁰ NYU Marron Institute experts show that the need to create environmental impact statements and get them approved detrimentally affects the planning of high-speed rail and transit projects.³¹

While these regulations often exist for important reasons, their political support is somewhat disconnected from their underlying merits. They benefit concentrated or organized groups, from not-in-my-backyard community groups to local manufacturers, that fight against any reforms.³² The costs of these regulations, though, are shouldered by diffuse taxpayers with little incentive to pay attention. As a result, reforms are unlikely to gain much momentum, even if the benefits outweigh the costs.

Second, poor planning is a major cost driver for American infrastructure. Transit projects are often overbuilt. For instance, American train stations, particularly those underground, are designed to be much larger than they need to be, which Eric Goldwyn and others have argued drives up costs.³³ Planners envisioned the Second Avenue Subway and Boston's Green Line extension stations as monuments, rather than limited, functional projects. Similarly, projects are often used to achieve multiple policy ends, such as setting aside office space in underground train stations for transit employees, building parks, and engaging in beautification efforts.³⁴ And while American transit agencies could look outside the country for successful cost-control efforts, Alon Levy has argued that they rarely adopt or even show curiosity about cheaper European methods of construction.³⁵

On top of this, state and local transportation departments are often too small to adequately oversee the private consultants and engineering companies that actually build major projects.³⁶ The "Big Dig," the famously expensive and delayed tunnel project in Boston, was largely planned and built by the giant firms Bechtel and Parsons Brinckerhoff. Government officials had difficulty monitoring—or even understanding—what the companies were doing.³⁷

Finally, infrastructure construction reveals the unaccountability of political leadership at the state and local levels. I have argued that many of the stories we tell about infrastructure costs involve explanations but not reasons.³⁸ There are plenty of explanations for why projects cost so much, from too-deep train stations to out-of-control contractors, but they don't help us understand why politicians often seem not to care about increasing costs. For that, we need to understand why there is insufficient political pressure to encourage politicians to do better.

Perhaps one reason is that voters have trouble identifying whom to hold responsible in the first place. Big American infrastructure projects receive funding from multiple levels of government. While prominent national politicians like senators claim responsibility for securing funding, they lack operational control over the construction process. Local elected officials often have little control over big projects that cover multiple jurisdictions.³⁹ Instead, state departments of transportation or unelected public authorities usually build big projects. Determining whom to hold responsible for cost overruns or delays can be difficult.⁴⁰ And thus, the actors who are actually in charge of delivering important infrastructure projects receive little popular pressure to reduce costs.

The Priority List: Justifications and Mechanisms

Environmental law experts J. B. Ruhl and James Salzman recently advocated for exempting certain green energy projects from the normal slate of federal, state, and local environmental regulations.⁴¹ Climate change has created a huge need to build clean energy quickly, they argue, so a faster and less onerous system of regulations should apply to a limited number of projects that are truly essential to the green energy transition.⁴² This would speed these vital projects up and insulate them from the endless fight over whether to reform environmental regulations more broadly.

As a matter of first-best policymaking, there is something unsatisfying about limiting the benefits of a better, faster system to an arbitrary number of projects. If laws like NEPA and other regulations are excessively burdensome, why shouldn't we simply replace them outright?

But Ruhl and Salzman's proposal is focused on solving a political problem, not abstract considerations of what policy should look like in a vacuum. And there is a shrewd political logic to targeting a few key projects. Even if there is not sufficient political will to reform the broader environmental review system, politicians and voters might still support exemptions for a few big projects because they are truly essential to the green energy transition.

The same logic can be applied to transportation infrastructure (and maybe more so, as transportation infrastructure has broader bipartisan political support). Huge infrastructure projects are naturally prominent, their potential costs and benefits regularly discussed in the press. As a result, many ordinary voters know about and will support the projects if they are efficiently constructed. Further, the country as a whole would benefit from, say, a high-speed rail in California or a new, improved replacement for the destroyed Francis Scott Key Bridge in Baltimore. The Priority List approach is based on the belief that we as a polity would be willing to bear real costs to get these big projects built, even if we would not do so for other, less prominent projects.

How would this work?

Identifying Projects for the Priority List

An idea advanced by Ruhl and Salzman is that exemptions for important green energy projects be proposed to Congress with a "closed rule," as an unamendable package.⁴³ This draws on lessons from the BRAC process, which Congress created to overcome an analogous collective action problem. The BRAC process required Congress to accept or deny a whole package of suggestions from the secretary of defense about which military bases should be shuttered. Members of Congress could not modify

the package by, for instance, opposing the closure of a single base in their constituency.⁴⁴ As a result of BRAC, Congress could achieve what many thought was impossible, closing many locally popular but expensive and inefficient military bases.

Closed rules could help target infrastructure spending. From the early days of the republic,⁴⁵ Congress has struggled to choose specific infrastructure projects without the process devolving into a pork-barrel mess.⁴⁶ As a result, Congress has generally avoided choosing individual projects and instead delegated responsibility to the states, supporting infrastructure through the tax exemption on municipal debt interest and formula grants to state transportation departments.⁴⁷ While the federal government is involved with some project-specific spending through loans (via the Transportation Infrastructure Finance and Innovation Act, for example) and discretionary grants,⁴⁸ it does so largely through the DOT, not directly from Congress.

Of course, Congress could simply authorize the secretary of transportation to decide which projects should be on the Priority List. But this would face several hurdles. First, even when power is formally delegated, members of Congress tend to lobby for specific projects.⁴⁹ Second, and more importantly, Congress is unlikely to be willing to delegate to the president and the secretary of transportation the hugely important power to exempt projects from significant environmental or labor laws. The Priority List process keeps Congress involved but limits Congress's tendency to lard up transportation bills with pork.

So, in its next transportation funding bill, Congress should require the secretary of transportation to choose early-stage proposals from state and local governments for a Priority List. Congress would agree to vote up or down on the whole list and appropriate money to support projects on the list in advance. The secretary would have substantial incentives to create a list that would get through Congress—if the package is rejected, there would be no Priority List for that transportation funding cycle and the money allocated to it would not be used for transportation. Even so, Congress could further constrain the secretary's

selection by mandating that projects on the list are spread across different regions of the country, capping the number of projects on the list, establishing economic and environmental guidelines to guide the secretary's decision-making about which projects should be listed, asking the secretary to target particular types of transportation (trains, roads, bridges, etc.), and requiring the secretary to indicate which projects on the list merit particular regulatory exemptions.

The secretary should also be required to analyze the projects holistically. At a minimum, the secretary should account for each project's economic, social, and environmental effects, mirroring the standards used in existing discretionary grant programs.⁵⁰ But the secretary should also consider how being on the Priority List would improve the project's execution—that is, whether the project would likely be difficult to manage and whether it would particularly benefit from regulatory exemptions. And the secretary should consider whether there is political accountability built into the project. Since projects would be exempt from certain federal regulations, it is even more important that voters can hold someone accountable for failures. Projects for which local political accountability can effectively replace regulatory oversight should be favored.

In the initial transportation financing bill, Congress would give the secretary of transportation a deadline for producing the list and agree to hold a closed rule vote on the list within a certain amount of time. Of course, it would be difficult to force Congress to make good on its promise. But the whole idea is that the projects selected would be politically popular—they are supposed to be particularly good projects!—and thus pressure Congress to vote on the list.

One could also imagine a slightly different process if Congress decides that the way I have presented the Priority List takes away too much of its authority. Here is a slight variation on the proposal: Congress could lay out the values that govern inclusion on the list and charge the secretary of transportation with creating both a “long list” of potential projects and a “short list” of what he considers the best projects for

the Priority List. A specially designated congressional committee could then develop its own Priority List from the long list of projects. Congress would promise to vote on both the administration's short list *and* the committee's list, using a closed rule for both votes. Whichever got more votes—Congress's list or the secretary's list—would become the Priority List, presuming one of them got at least majority support.

One could imagine many other variations as well. But the key is that—however projects are chosen—Congress agrees to hold a vote on a closed rule so it is not subject to pork-barrel amendments. And, of course, that being on the list provides projects with special benefits.

Effects of Being on the Priority List

After Congress approves a Priority List, what comes next?

Surge of State Capacity

“State capacity is about state (and local) governments,” as Nick Bagley and I argue elsewhere.⁵¹ State and local governments do most of the planning for and supervise the building of transportation projects. But any given state or local government is unlikely to have built too many massive projects. Even New York City has constructed only two major extensions to its subway system in the past 70 years.⁵² So it should be no surprise that project sponsors often do not have deep benches of expert civil servants to plan and manage mega projects.

The federal government already subsidizes state and local projects (with strings attached, in the form of regulatory review and other requirements) and even provides grants for technical assistance.⁵³ But it could also provide in-kind subsidies in the form of talented engineers and transportation planners. Congress should appropriate funds for DOT to put together a crack team of employees to detail to Priority List project sponsors.

This would improve state and local governments' oversight of big contractors.⁵⁴ For complex infrastructure projects, governments have no choice but to hire from one of the few giant engineering firms and planning firms with sufficient skill and

capacity to do the job. But when they do, state and local government agencies are usually not big or sophisticated enough to oversee them.

By contrast, a *federal* agency could build a team that could match the sophistication of the Bechtels and Balfour Beattys of the world. DOT's newly established Project Delivery Center of Excellence provides a base on which to build this program.⁵⁵ While federal assistance would not eliminate contracting, detailing a top-tier federal engineering and planning task force to state and local governments would reduce the mismatch in capacity between transportation departments and their supersized contractors. (We might need to pay higher salaries and encourage short terms of service to attract top talent.) And since the team would be a repeat player across projects, contractors would have incentives to behave, lest it harm their ability to get future contracts.

This is particularly pressing for project planning. Whether it is overplanning to avoid political conflicts, ignorance of international construction methods, or generally shoddy thinking, many experts see the planning process as a key driver of costs. If DOT is involved with projects early, its planning expertise could be especially valuable. For example, DOT experts could learn how projects work in other countries and bring applicable methods to state and local project sponsors.

There are concerns about how borrowed state capacity would interact with the political goals of state and local project sponsors. After all, overplanning is often a result of local political priorities, not a lack of technical capacity; local governments often plan for excessively expensive projects out of a desire to mollify unions or neighborhood groups.⁵⁶ However, having national experts working on projects and explaining the costs of overplanning may give project sponsors some ballast to face down local political opposition.

Cheaper Financing

Alongside “formula grants” to state departments of transportation, the most important form of federal financing for infrastructure is the tax exemption for municipal debt interest. State and local governments generally fund infrastructure with debt, allowing

them to spread the cost across users of a project over its useful lifespan.⁵⁷ Because municipal bond interest is exempt from income taxes, state and local governments can sell their debt at lower interest rates and still find buyers. Modern federalism and localism—the ability of states and localities to choose their own projects and policies—is built partly on this open-ended subsidy.⁵⁸

Despite its benefits, the interest exemption has its downsides. It is regressive, as people with high incomes have the greatest incentive to buy municipal bonds—the benefit to the buyer depends on his or her marginal tax rate.⁵⁹ This drives another inefficiency of this subsidy: If there are not enough high-income purchasers to scoop up all of an issuance of municipal bonds, a state or local government must price the bonds to appeal to buyers at lower income tax bands (who are, in effect, getting less of a federal subsidy). But doing so gives the inframarginal purchasers in the top income band a windfall—they get a higher interest rate *and* pay no taxes on income that otherwise would have been taxed at the top rate. This benefits the already rich but does not support infrastructure efficiently. Finally, subsidizing municipal bonds through a tax exemption systematically excludes large classes of investors.⁶⁰ Foreigners and pension funds don't pay income taxes and thus are mostly uninterested in tax-exempt municipal bonds.

After the municipal bond market seized up in 2008, the American Recovery and Reinvestment Act included a provision that allowed state and local governments to issue BABs.⁶¹ The federal government effectively gave direct cash payments to state and local governments issuing BABs, which are municipal bonds with *taxable* interest, to fund new infrastructure investments. The amount issuers received was supposed to be roughly equal to the amount of tax revenue the federal government would have forgone if the bonds were issued on a tax-exempt basis.⁶² But because these were taxable bonds paying ordinary market interest, the bonds were attractive to non-taxpaying and non-top income bracket purchasers. This increased demand for the bonds, driving down interest rates.⁶³ As a result, BABs were

a more efficient mechanism for funding infrastructure than the tax exemption.⁶⁴

There are reasons to be skeptical of using BABs as a broad replacement for the tax exemption, as I and others have argued.⁶⁵ Tax-exempt bonds are almost all purchased by Americans and are frequently bought by residents of the issuing state because states often provide exemptions from state income taxes for in-state purchasers. As a result, municipal bonds are somewhat protected from “contagion.”⁶⁶ When Detroit declared bankruptcy, it did not disrupt the ability of jurisdictions in the rest of the country to borrow the way that defaults in parts of Latin America have affected borrowers throughout the region.⁶⁷ In-state purchasers of municipal bonds are not harmed by balance-sheet problems caused by out-of-state defaults and generally have more knowledge about in-state issuers. Further, the tax exemption creates pools of capital that can be tapped by small local governments, reducing their reliance on expensive bank financing or state conduit borrowing.⁶⁸

However, skepticism about BABs only makes sense if BABs replace, rather than supplement, normal tax-exempt munis. If BABs are available for only a few big projects, then the case for them becomes unassailable. BABs do not cost the federal government more than the tax exemption does, but they do provide greater value for every dollar spent, because BABs are attractive to a wider set of purchasers and do not incur the extra costs that tax-exempt munis do when there is a dearth of high-income purchasers. That said, any revival of BABs must build in legal protections for the original program’s shortcomings, like the need to continue payments to issuers even in sequestration.⁶⁹

If Congress approves a Priority List, it should appropriate money for “direct pay” BABs that project sponsors on the list could issue. This would drive down the cost of these projects without creating any of the risks of a broader BAB program.

Regulatory Exemptions

While state and local governments build and own most infrastructure projects, they regularly receive federal money and must follow federal regulations.⁷⁰

The literature commonly points to these regulations as a major driver of the exorbitant costs of building infrastructure in the United States. Some regulations directly influence the projects’ cost, by requiring higher wages for employees or the use of more expensive, domestically produced materials.⁷¹ Others, like environmental regulations, work both directly and indirectly, requiring extensive and costly processes, mandating specific project requirements, and exposing parties to litigation risk and delay for failing to comply completely.⁷²

These regulations serve important policy ends. But there are reasons to believe that political support for them is strong for reasons unrelated to their merits. Each provides concentrated benefits for small or well-organized interest groups, often working with ideological groups in “Baptists and bootleggers” coalitions.⁷³ In contrast, the costs they impose on projects are distributed among the broad class of taxpayers and further divided among the levels of government paying for the projects. As Mancur Olson famously argued, concentrated benefits create strong incentives for collective political action in ways that distributed costs do not.⁷⁴ As a result, despite much discussion about reforming these laws over the years, they have so far been politically bulletproof.

The biggest and most radical action Congress could take as part of a Priority List program would be to authorize exemptions for important projects from some or all of the regulations I discuss (or others). I briefly examine several classes of regulations below, but the costs and benefits of laws and regulations like NEPA, Buy America, and Davis–Bacon have been discussed extensively in the literature.⁷⁵ Given what else it seeks to accomplish, this report cannot delve too deeply into each of these policies’ merits and drawbacks. However, for those convinced that, at least some of the time, these regulations are excessive and expand costs beyond what their benefits justify, the Priority List mechanism may open the door to reform in ways that ordinary infrastructure politics cannot.

Why? The Priority List links reform not to the taxpayer’s general interest in frugality but to the specific goal of getting targeted, high-profile projects done

quickly and cheaply. That is, for prominent projects, regulations impose concentrated (or at least significant) costs to match their concentrated benefits. Potential beneficiaries of the Priority List projects—the drivers who would use a newly built bridge, the commuters who would ride a new subway line, and so on—would comprise a powerful and distinct interest group to lobby for exemptions to federal environmental, protectionist, or labor regulations, at least for those projects that ordinary voters know something about. Specific interests, like the engineering firms likely to be contracted and workers likely to be employed, might also provide useful support, as the projects would be big enough to encourage them to lobby. Similarly, home-state senators and representatives would follow suit, eager to receive credit for getting these prominent projects up and running, and thus may endorse exemptions from regulations they generally support.

Regulatory exemptions may still prove too big a political hurdle. The Priority List proposal puts it in the secretary of transportation and Congress's hands to figure out how much political work the list can do. That is, the secretary and Congress would have to figure out the mix of exemptions that are both politically possible and attractive as a matter of policy. The proposal's structure gives these figures discretion in how to shape the list to account for political risks. But Congress has created regulatory exemptions recently. For instance, in the Building Chips in America Act of 2023, Congress exempted federal-funded semiconductor "fabs" from environmental reviews.⁷⁶

A Priority List bill should broadly include the *possibility* that specific proposals will come with exemptions from federal regulations. It should be up to state and local governments to indicate in their proposals whether they are seeking any regulatory exemptions. The secretary of transportation would then indicate the exemptions recommended for each project in the Priority List package given to Congress. Not all projects would need or merit exemptions; the secretary should recommend exemptions when they would make projects faster, cheaper, or better. Congress would then also have to agree, which it would

do by approving or rejecting the package of Priority List projects.

Exempting the biggest projects from federal regulations could entrench those regulations, since lawmakers would not be able to point to the most prominent examples of their onerousness. But the politics would likely go in the other direction. Once it becomes clear that regulatory exemptions can make it easier to build, those seeking to reform these regulations more broadly will have clear and powerful examples with which to press their point.

Environmental Laws. No area of federal regulation over infrastructure projects has been subject to more criticism than our environmental laws.⁷⁷ From substantive and procedural requirements to opportunities for private litigation, environmental laws impose high costs on infrastructure investment. They do so for good reasons: to stop infrastructure projects from destroying environmentally sensitive areas, harming endangered species, and unnecessarily running highways or other projects through poor and minority residential areas.⁷⁸

However, critics argue that our laws aren't actually useful for protecting the environment, particularly where action, rather than inaction, would improve the environment.⁷⁹ Consider the arduous process and litigation surrounding New York City's environmentally beneficial congestion pricing plan or oil companies using California's environmental permitting system to challenge a moratorium on drilling in Los Angeles.⁸⁰ Critics also argue that the current system of review takes too much time, imposing costs far exceeding any benefits.⁸¹ The broader system of environmental laws, at both the federal and state levels, empowers community groups and interest groups to stand in the way by suing the government after projects have been approved, either extracting pounds of flesh in settlements or stopping projects entirely.⁸²

When it comes to infrastructure investments, few people advocate abandoning environmental laws completely. They instead argue for a variety of reforms, including limiting private parties' ability to sue,⁸³ speeding up the process of approving

environmental impact statements,⁸⁴ and exempting particular types of projects.⁸⁵ Certain exemptions are already written into our laws, both in environmental statutes⁸⁶ and as part of other substantive statutes.⁸⁷ Famously, President Trump (and President Joe Biden) invoked exemptions in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (and its 2005 amendments) to build parts of the “border wall” without going through environmental review and to preempt state and local laws.⁸⁸

While there has been enormous criticism of the costs environmental laws add to building infrastructure—both traditional infrastructure and “green infrastructure”—there has been little legislative reform.⁸⁹ Worse, some bills touted as “permitting reform” would in practice create more opportunities for delay and litigation.⁹⁰

Ruhl and Salzman propose that Congress create an alternative regulatory system for particularly important green energy projects that moves more quickly and better balances benefits with costs.⁹¹ This alternative system would (1) consolidate all environmental review processes into a single regulatory entity, (2) preempt state and local laws, and (3) limit post-approval litigation. Like the current system, Ruhl and Salzman’s idea values participation opportunities and focuses on equity, but it does so exclusively at the front end of the approval process, rather than at the back end through litigation.

Their proposal, which is designed for green energy, could be similarly applied to transportation infrastructure. There is a broad universe of ideas for the specific form this alternative environmental review system could take (and it is beyond the scope of this report to lay out which is best). But for the largest and most important transportation projects, Congress could develop an alternative regulatory structure and allow Priority List projects to use it.⁹² The goal is to manage the trade-offs more effectively and preserve some elements of environmental review while acknowledging the costs of delay and mitigation in light of those projects’ systemic importance. This alternative system could also serve as an example to inspire reform of environmental review more broadly.

Buy America. A number of statutes have Buy America policies, requiring state and local infrastructure projects receiving federal money to use domestically produced inputs.⁹³ The 2021 Infrastructure Investment and Jobs Act and related regulations extended Buy America rules to new types of infrastructure projects and new products. Now, they apply to not only iron, steel, and certain manufactured goods but also nonferrous metals, plastic and polymer-based products, glass, and construction materials like lumber and drywall.⁹⁴ The justification for these policies is straightforward—to protect domestic manufacturing jobs.⁹⁵

Critics have long argued that Buy America requirements have more costs than benefits.⁹⁶ The Peterson Institute for International Economics found that under these rules, manufacturing jobs are created at a cost of around \$250,000 per job.⁹⁷ Buy America regulations delay projects, particularly when compliant products are hard to find.⁹⁸ Regulations are even more intense for certain classes of infrastructure. The Foreign Dredge Act of 1906 bars the use of foreign ships when dredging ports, even though the most sophisticated dredging ships are foreign.⁹⁹ This has radically increased the cost of dredging in the United States and delayed American ports’ ability to accommodate the largest post-Panamax ships, all for small gains to domestic production.¹⁰⁰

The Priority List could authorize exceptions to Buy America and other domestic content rules in specific instances, allowing big-ticket projects to get built at lower costs. As it stands, federal agencies can grant exemptions from the basic Buy America regulations when using domestically produced products would not be in the public interest or would increase the overall project cost by more than 25 percent.¹⁰¹ Congress and several presidential administrations have thus already acknowledged there are limits to how far we should go in pursuit of increasing domestic manufacturing jobs. The Priority List process would simply expand this to some crucial infrastructure projects.

Labor Rules. Federal laws also directly regulate labor costs on state and local infrastructure projects that receive federal money. Most notably, under

the Davis–Bacon Act and other laws, workers must be paid the “prevailing wage” in the region.¹⁰² President Biden issued regulations that base the prevailing wage on what 30 percent of workers make, down from 50 percent, increasing the wages paid under Davis–Bacon.¹⁰³

Critics argue that these laws increase the cost of building infrastructure by increasing input costs.¹⁰⁴ The Congressional Budget Office has concluded that repealing Davis–Bacon would cut the deficit.¹⁰⁵ On the other hand, supporters of Davis–Bacon argue that higher wages attract better workers and thus improve productivity, or alternatively, just lead to lower profits for contractors. A substantial number of studies find that, on average, Davis–Bacon has no effect on costs.¹⁰⁶ One synthesis might be that the effects of Davis–Bacon and other laws vary by region. The Priority List would provide project sponsors and the secretary of transportation with a mechanism for recommending to Congress that an exemption to Davis–Bacon is warranted for a specific project.

Conclusion

This report argues that Congress should adopt a process for reducing the cost of, and speeding up, the most important infrastructure projects in America. Congress should ask the secretary of transportation to develop a package of promising, early-stage projects. The projects in the package—known as the Priority List—would receive a series of benefits.

First, DOT would provide crack teams to help with planning and project management for these enormous projects. Second, project sponsors would be

given the authority to issue “direct pay” BABs, which would drive down financing costs at no cost to the federal fisc. And third, the secretary would be free to propose exemptions from certain federal regulations or propose subjecting them to less rigorous requirements. Congress would instruct the secretary to create a “Priority List” following each renewal of a big transportation funding bill and agree to vote on it as a package under a “closed rule.”

The Priority List process would generate two major benefits. First, it would make possible the faster and cheaper construction of our country’s most important infrastructure projects. Second, its success might spur broader reform of the process of building in this country by creating examples of how infrastructure can be built more quickly and for less.

If we can rebuild the politics of infrastructure reform, we can move forward with rebuilding the country more broadly. The Priority List would help us get there.

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