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Weekly 

In This Issue

A "Big Pot of Money" is Needed for Infrastructure

Pa. Includes Favorable Changes to Little Miller Act; Raises Bond Threshold

SFAA Working Group Seeks Amendments to State Review of Licensing

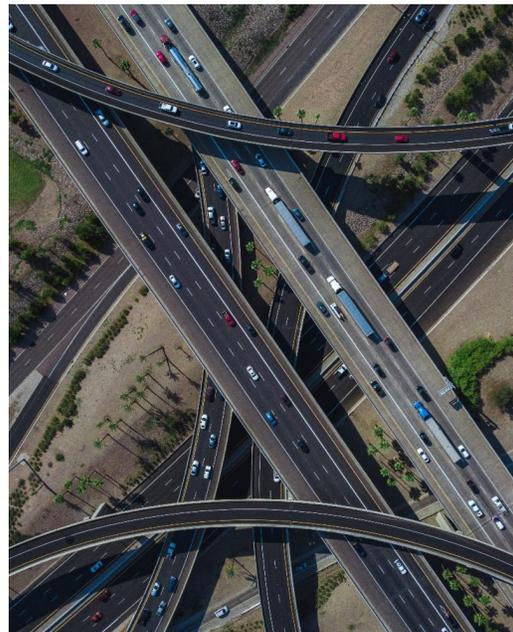
Kentucky Banks to Provide \$125 Million to Fund P3s

A "Big Pot of Money" is Needed for Infrastructure

Representative Peter DeFazio (D-OR), Chair of the House Transportation and Infrastructure Committee, opened a six-hour hearing on infrastructure by telling the Committee that if Congress does not invest now, it is only going to cost more in the future. Additionally, it was also noted that our GDP already is lower than it should be because of failure to invest.

Infrastructure is a bipartisan issue, but funding remains the key. One thing that was clear after the hearing is that there is no single source for funding. Among the sources suggested were:

- Increase the gas tax
- Tax on vehicle miles traveled
- Tax on electronic and hybrid vehicles
- Private financing
- Public activity bonds (PABS)



Public-private partnerships (P3s) were mentioned with the usual caveats of prior hearings, namely that they are a tool in the kit, but they don't work for all projects or in rural areas. PABS may play a significant role in achieving consensus on an infrastructure package that benefits all stakeholders.

Any funding bill also may need an energy component to reduce pollution and greenhouse gases in order to gain support from new members in Congress.

Former Secretary of Transportation Ray LaHood summed it up best: We need a big pot of money from Congress and we need it in the next six months. President Trump needs to play a leadership role with the Senate to pass an infrastructure bill. Otherwise there will be no infrastructure bill until after the 2020 presidential elections.

President Trump made only a brief reference to the need for infrastructure spending in his State of the Union address last week. He offered no details on how the White House wants to approach this issue. There also were no Administration witnesses at the hearing.

The Senate Environment and Public Works Committee has its first hearing on infrastructure this week.



Pa. Includes Favorable Changes to Little Miller Act; Raises Bond Threshold

Amending the Little Miller Act for local governments is an affirmative state legislative goal for SFAA this year and now we have a bill in play early in the session.

Pennsylvania SB 207 would eliminate the discretion that local governments have in the Little Miller Act to accept any financial security in lieu of performance and payment bonds. The bill would allow only surety bonds, letters of credit, or escrow accounts as acceptable performance and payment security. Existing law requires that the security required must be equal to 100% of the contract amount. The bill, however, also would raise the bond threshold from \$10,000 to \$500,000.

We will work with APCIA to get the threshold lowered significantly, while passing the favorable amendments to the Little Miller Act.

The existing Pennsylvania public-private partnership (P3) law mirrors the Little Miller Act on bonding for local governments, rather than the Little Miller Act for state projects, which requires 100% performance and payment bonds for the contract amount. A P3 bill recently introduced in Pennsylvania under HB 176 also mirrors the Little Miller Act for local governments.



SFAA Working Group Seeks Amendments to State Review of Licensing

SFAA's Occupational Licensing Working Group has proposed amendments to model legislation being introduced in the states that highlight the importance of consumer protection and change the characterization of bonding as one of the more restrictive forms of regulation. Under the model law from the American

Legislative Exchange Council (ALEC), licensing is the most restrictive form of regulation and should only be used for activities that threaten public health and safety. Yet mortgage brokers, home improvement contractors and many other businesses that take money from consumers can cause significant financial harm to consumers without any threat to public health and safety.

The ALEC model contains a list of "least restrictive" to "most restrictive" forms of regulation. Market competition, private rights of action, and private certification are among the methods listed as less restrictive than bonding. Bonding and insurance without certification, registration or licensure also is considered less restrictive. Private rights of action for breach of contract or negligence only provide an effective remedy for the consumer if the consumer has the resources to pursue litigation. Private certification is perceived to be more efficient, but is it less costly to those that need to be certified? Requiring bonding and insurance in a vacuum does not make sense as the bond always must attach to some obligation, usually the laws and regulations. SFAA's goal is to move bonding and insurance into the least restrictive category.

Kentucky Banks to Provide \$125 Million to Fund P3s

The Western Kentucky Infrastructure Fund (WKIF) consists of five banks that have pooled \$125 million to fund local government P3 infrastructure projects. WKIF will provide debt financing and the revenue generated from projects financed will repay the loans. WKIF was formed in response to a P3 law for local governments enacted in 2016 to allow them to partner with private entities to finance repairs to roads and bridges, water and sewer system and social infrastructure.

The SFAA and APCIA were successful in including a bonding requirement in the law.



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