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The Future of Texas Infrastructure

A HUSCH BLACKWELL ROUNDTABLE REPORT

Services

Energy Storage

Public-Private Partnerships (P3)

Professionals

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Recently, Husch Blackwell convened an internal roundtable to discuss the future of infrastructure projects in the state of Texas. Our esteemed panel of participants included Judge Robert Eckels, former Texas state legislator and County Judge of Harris County; partner Kate David, who serves as the firm's Houston office managing partner; Austin-based partner Nikelle Meade; and Houston-based partner Sandy Hellums-Gomez.

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The State of Texas has experienced a tumultuous twelve months. First, like every state, Texas had to deal with the unprecedented impact of the COVID-19 public health crisis, which shuttered businesses and forced much of the population into a lockdown that stifled commerce. The western Gulf of Mexico also endured a particularly active tropical storm season, with Hurricane Hanna making landfall near Padre Island, Hurricane Laura hitting Louisiana just 30 miles east of Texas, Tropical Storm Beta drenching the entire Texas Gulf Coast, and Hurricane Delta pounding Louisiana, again near the Texas state line. Finally, Texas felt the severe effects of a winter storm in February 2021 that brought record low temperatures in some places and stressed the state's power grid.

The confluence of these events provided Texans with first-hand experience of how important infrastructure is to crisis response, particularly in circumstances that are difficult to predict or foresee. Our roundtable explored the likely course of infrastructure projects in Texas and what kinds of projects we're likely to see in the near future, based both on the lessons of the past year's difficulties as well as prior existing needs.

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What kinds of infrastructure require immediate attention in light of the past year?

The hurricanes, pandemic and Winter Storm Uri exposed critical deficiencies in infrastructure that impacted all Texans. For example, the pandemic made it glaringly obvious that we have a severe need for greater access to an affordable, dependable high-speed internet connection. Broadband became crucial for students to continue their academic studies, employees to work remotely and individuals to access healthcare, job training, job opportunities and public services. Groups without access to the necessary broadband connections were concentrated in rural areas not served by existing or affordable telecommunication infrastructure. Similarly, severe weather events caused widespread and lengthy rolling power outages that left Texans with water shortages and a lack of access to medical care and necessities such as food and heat. The storm revealed vulnerabilities in Texas's power plants and natural gas infrastructure. Virtually all Texans were adversely impacted. The failures in infrastructure became a crisis that has compelled Texas stakeholders to confront infrastructure deficiencies.

Broadband

The consequences of failing to invest in broadband infrastructure have created a shift in perspective and a recognition of broadband's central role in our lives. A diverse group of public entities—such as school districts, the regional education authority and city and county governments—enthusiastically support broadband projects. Texas state government officials also have recognized the importance of expanding and deploying broadband access to communities across the state. In his biennial address to the legislature, Governor Abbott described broadband access as one of five emergency priorities. The Texas Senate has committed to adopting enabling legislation to support development of broadband infrastructure. On March 31, 2021, with bipartisan support, the Texas Senate passed Senate Bill 5, which creates a broadband development office and directs the office to develop a state broadband plan with long-term goals and to award financial incentives to expand access to and adoption of broadband in urban and rural areas to solve connectivity issues. Enabling legislation, federal dollars, and support among public stakeholders provide an opportunity for the public sector to use economic development tools to structure deals to develop broadband infrastructure broadly across the state.

Transportation

Significant levels of federal funding are expected for transportation infrastructure projects that address climate change, use innovative technology, remediate legacy assets, and attract non-federal investment. As a result, we view investment in transportation infrastructure as a historic opportunity to achieve multiple goals that benefit a greater number of diverse communities in Texas.

Texas has been leading the way with transformative transportation infrastructure projects. Under Robert Eckels' leadership as founding chair of a coalition of government, educational institutions, and

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private sector groups, the Texas Central Railway (TCR) was conceptualized and has progressed successfully to become the first "shovel-ready" high-speed rail project of its scale in the U.S. The recent 2020 release of the final Environmental Impact Statement ensures that the project minimizes environmental impact and that TCR is ready to embark on the development of a high-speed rail project.

High-speed rail will transform the corridor between Dallas and Houston by linking the metropolitan areas with a stop near College Station, generating tax revenue for local municipalities along the route. The TCR project offers a solution to multiple issues such as population growth, traffic congestion and carbon emissions. The rail project is funded entirely with private investment, but additional federal funding for infrastructure could provide incentive to extend the rail to Austin and San Antonio to create a single urban unit. Transportation projects such as the TCR are designed to meet multiple needs including light rail development, improvements to existing transit operations and "hike and bike" trails in local communities for cyclists and pedestrians.

In addition, there's an opportunity for private entities and regional public entities, such as the TCR, the Metropolitan Transit Authority of Harris County, Texas Department of Transportation and the City of Houston to collaborate on projects along the same corridor. By sharing in the design and use of right of ways, the public entities can achieve cost reductions for individual players and maximize community use and benefit.

Affordable Housing

As a result of the pandemic and storms, affordable housing and related infrastructure is a third area of development that is expected to expand and to potentially provide solutions to multiple social and economic issues. Local governments in Texas have initiated plans for restoring the supply of affordable housing in neighborhoods and are providing developers incentives to build affordable housing in communities. In conjunction with affordable housing, localities simultaneously are exploring plans to 1) distribute electric vehicle charging stations to address climate change; 2) increase tree cover to prevent flooding, improve water quality, prevent air pollutions and reduce temperatures; and 3) create greenways for recreational use and environmental protection.

Water-related Infrastructure

We expect to see investment in transformative water-related infrastructure projects. The recent hurricane caused heavy rains and flooding that resulted in overflows of storm systems and wastewater treatment facilities causing the release of contaminants into lakes, rivers and other bodies of water. As a result, the Texas legislature has proposed bills, such as SB 1160, to create an entity to manage projects designed to address storm surge flooding on the Texas Gulf Coast and to receive federal funding for storm surge infrastructure projects.

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While the projects to initiate water-related infrastructure are important, the holistic approach adopted by local communities on a regional basis is also significant. Proposed plans seek to not only build infrastructure to prevent damage to facilities during storm surges but also to restore and utilize natural ecosystems that protect the Texas coastline from floods, and to develop parks. Ecological restoration contemplates restoration and protection of wetlands, bays, estuaries, reefs, islands, bays and beaches.

There is also considerable activity in ensuring a clean supply of potable water for Texas's growing population. Projects like the Vista Ridge Water System, San Antonio's $3.4 billion project consisting of the production, treatment, delivery and sale of up to 50,000 acre-feet of potable water each year for 30 years, have positioned the region favorably for future growth, diversifying its water supply and adding substantial capacity for current needs.

Renewable Energy

Investment in renewable energy to decarbonize and modernize the power grid infrastructure will continue to expand. Texas is currently a leader in the renewable energy market. According to recent reports, ERCOT plans to more than double their wind and solar capacity in the next three years. If Congress passes some form of the American Jobs Plan, federal funding will accelerate investment in renewable energy technologies, including energy storage solutions.

What role can the private sector play in bringing vital infrastructure assets online?

Traditionally, infrastructure projects in the U.S. have required large financial commitments from the public sector; however, there are now meaningful alternatives to the purely public works project. The rise of public-private partnerships (P3s) in the U.S. have given local and state authorities far greater flexibility in project procurement and delivery.

While P3 is a variable model that encompasses many different forms, primarily it involves an agreement between a public entity and private businesses to design, build, finance, maintain and operate an infrastructure asset, including roads, tunnels, bridges, ports, stadiums, arenas and a host of social infrastructure such as dormitories, jails and courthouses.

Even in Texas, where state and local government balance sheets are very strong, P3 has made significant inroads. There have been several projects launched in Texas over the past decade employing the P3 model. Eight such projects reached financial close in 2019-2020 alone, including a new courthouse in Travis County, a new medical building and student housing at Texas A&M University, and a toll road segment in Tarrant County. The aforementioned Vista Ridge project, which reached a financial closing in 2016, is the largest water-based P3 in the U.S.

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Clearly, there is a role for the private sector in standing up infrastructure projects. Sometimes, the private sector is the only place where state and local governments can find the required expertise. At other times, sharing the financial and operational risk of certain projects with the private sector makes a lot of sense. Many governments and authorities in Texas have the luxury of approaching P3 as one option among many. State entities generally have very strong credit ratings and ample access to the credit markets. What P3 does is broaden the ability of the public sector to pick and choose how to partner with the private sector. Given that there are various infrastructure needs that need to be addressed simultaneously, P3 can extend the bandwidth of public entities to take on multiple major projects at the same time.

What role will the federal government play in Texas infrastructure projects?

To be sure, Texas will move forward with infrastructure projects with or without greater spending from Washington; however, a concerted federal effort could make a big difference in the scale of what is done in Texas and elsewhere.

In April 2021, President Biden introduced the American Jobs Plan (AJP) that will invest 1% of U.S. GDP per year over eight years (about $2.3 trillion this decade) to rebuild and invest in America's infrastructure. The types of potential projects funded by the AJP include clean energy, broadband, water systems, transportation and future technology projects. The administration has called on Congress to draft and enact legislation that implements the AJP and provides opportunities for businesses to share in massive new revenue opportunities.

Additionally, on March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARP), which establishes and funds the $350 billion Coronavirus State and Local Recovery Fund (Recovery Fund), one of the "largest spending items" in the ARP. The Recovery Fund will provide relief to 19,000 cities, towns and villages to mitigate the impact of the pandemic and includes an allowance for investment in water, sewer and broadband infrastructure. While the U.S. Treasury Department is expected to clarify the definition of the infrastructure clause "water, sewer or broadband," and whether the Recovery Funds can be used for storm and wastewater projects, the Recovery Fund provides a level of resources that can result in transformational benefits.

In addition, the Infrastructure for Rebuilding America grants offered by the U.S. Department of Transportation for transportation infrastructure developments and, if passed, the American Jobs Plan, would provide a massive amount of funding for transportation ($621 billion) and power ($100 billion), water ($111 billion), broadband ($100 billion) and housing ($213 billion) infrastructure projects.

These appropriations could drive economic development decisions. The federal funding for infrastructure development may help alleviate the growing tax burden for infrastructure projects and

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allow local leaders to pursue projects delayed due to lack of funding. Indeed, the anticipated issue will not be whether to invest in infrastructure but in which infrastructure projects to invest, the appropriate level of funding allocated among selected projects, and changes in the process for distributing funds. Addressing process issues can accelerate project delivery and significantly reduce costs due to delay and appropriation risk.

We've talked about partnerships between public and private sectors, but what about cooperation between public authorities? Is there a need for more active partnerships even among government entities?

Many of the challenges that infrastructure is meant to address span more than one city or county. Flood control, intercity rapid transit, broadband—these are project types that, definitionally, involve regional or statewide considerations.

We anticipate a greater use of regional and interlocal bodies to solve some of these infrastructure challenges. The ability to scale solutions—and to deploy resources more efficiently—is simply too compelling to ignore. Having said that, interlocal arrangements are very complex, and it takes time to work through the details so that each jurisdiction is satisfied that its interests are safeguarded and that project benefits flow in an equitable manner. Our team looks forward to working on these matters in the coming months as there is a need to move swiftly in order to get shovels in the ground as soon as possible. The next crisis is always just around the corner, and after the year Texans have endured, there is considerable public support to get to work.

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