

Key Goals For The Next Secretary Of Transportation

By Kathryn Thomson, Morrison & Foerster LLP

Law360, New York (January 4, 2017, 5:36 PM EST) -- A safe, reliable, efficient and sustainable transportation system is the lifeblood of this nation. It is critical to the economic prosperity of this country and to the well-being of everyone who lives here. It connects us to an increasingly global trade environment. It provides access to home, work, health care, education and other services that people and businesses depend on to survive and thrive.

But our infrastructure is aging, public investment continues to shrink, congestion on the roads and in the air continues to rise, and erratic weather patterns are wreaking havoc on the transportation system. According to data from the U.S. Department of Transportation (DOT) in its "Beyond Traffic" report, the average citizen spends more than 40 hours stuck in traffic annually at a cost of \$121 billion to the U.S. economy. The DOT also estimates that flight delays and congestion in our airspace cost the economy an additional \$20 billion each year.



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The American Society of Civil Engineers (ASCE) has repeatedly issued dire warnings. In every quadrennial report card issued since 1998, ASCE has given the state of the national infrastructure consistent D averages. In dollars and cents terms, ASCE currently estimates that "[f]rom 2016 to 2025, each household will lose \$3,400 each year in disposable income due to infrastructure deficiencies."

ASCE further observes, "If this investment gap is not addressed throughout the nation's infrastructure sectors by 2025, the economy is expected to lose almost \$4 trillion in GDP, resulting in a loss of 2.5 million jobs in 2025."

The statistics offered above reflect the existing needs of the transportation system, but we know that the demands on the system continue to grow. The DOT reports that the U.S. is expected to increase by 70 million people over the next 30 years, during which time the number of Americans over the age of 65 will increase by 75 percent.

The volume of freight moved in the U.S. over the next three decades is also estimated to grow by approximately 29 billion tons. But that is only possible if a strong, well-connected, multimodal transportation system is in place to support the movement of both goods and people.

Clearly, the U.S. faces numerous transportation challenges. But this country has even greater opportunities — particularly if we work collaboratively to advance our collective economic and societal

interests. Investment and innovation are the names of the game, ranging from long-term funding solutions, automated vehicles that save lives, drones, intelligent transportation systems and more efficient and resilient infrastructure design to risk-based decision-making.

So who will lead the charge? President-elect Trump has stated his intent to nominate Elaine Chao as the country's next secretary of transportation, and Senate confirmation is virtually certain. Chao, who comes from a maritime shipping family, is the wife of Senate Majority Leader Mitch McConnell and a consummate Washington insider.

She has worked in each of the past three Republican administrations, starting as a White House Fellow during the Reagan Administration. She worked at the U.S. Department of Transportation in the late 1980s and early 1990s, serving briefly as the deputy secretary. She subsequently served for eight years as the secretary of labor under President George W. Bush, where she was known for pushing to relieve regulatory burdens and reorganizing the department.

Most recently, she has served as a fellow at the Heritage Foundation and as a director on a number of corporate and non-profit boards. Chao's responses to the Senate Committee on Commerce, Science and Transportation Committee's nomination questionnaire, submitted on Dec. 19, 2016, indicates that she has not had any direct, hands-on experience in the transportation sector in more than 25 years, and has not written or spoken significantly on the subject in recent years.

Chao, nonetheless, indisputably has the skills to advance the transportation interests of this country. The question is whether she will use her skills to deliver long-term success.

To achieve success, she must be a visionary, creative and aggressive leader who will work with a diverse group of stakeholders to forge transportation solutions and hold Congress accountable in key areas.

Infrastructure Investment

Chao should identify viable options for a long-term, reliable and adequate source of infrastructure funding for all modes of transportation in all areas of the country, and she must then push a reluctant Congress (that thus far has been unwilling to make hard decisions) to adopt a workable and lasting solution.

A large, one-time infusion of revenue will not begin to meet the immediate needs of this country, let alone provide a solution that is vital to the economic health of the country. The long-term solution must provide for intermodal connectivity that is critical to an efficient system and the needs of people who live in urban, suburban, exurban and rural communities.

This is the only effective way to create lasting economic growth, including the creation and maintenance of high-paying jobs in the transportation sector.

Technology Innovation

Chao should continue to find ways to spur innovation in the transportation sector.

Automated vehicles, drones, intelligent transportation systems and performance-based design standards hold tremendous promise to enhance safety, mobility and efficiency in all modes of transportation. Supporting the development and deployment of such technologies is also good for the U.S. economy and trade, allowing U.S. innovators to lead the world.

Investing in infrastructure is a key element (as noted above), but Ms. Chao should also identify ways to ensure the safety of these technologies and responsibly manage cybersecurity and privacy risks.

In some cases, new regulations will be needed to replace outmoded regulations that currently impede the deployment of new technologies. In other cases, risk-based consensus standards may suffice.

Energy Efficiency and Sustainability

Chao should continue to lead the DOT in its efforts to reduce the costs and societal impacts of the transportation sector. Regardless of whether one is concerned about climate change or not, the reality is that energy efficiency is good business.

Fuel costs generally are the most significant portion of transportation costs. More efficient cars, trucks, airplanes, trains, systems (such as the Federal Aviation Administration's NextGen initiative), and infrastructure mean that businesses and individuals can spend less on fuel and invest the money in other ways.

Additionally, erratic weather patterns are expected to continue, so wise investment decisions must ensure that new infrastructure is built to withstand extreme weather and environmental events.

Safety Management Systems

Chao should continue to move the transportation industry towards proactive management of risks.

Safety management systems (SMSs) first started in the aviation sector and have substantially reduced risk and enhanced safety in passenger and cargo air carrier operations, air traffic control and aviation safety programs. Other modes of transportation, such as rail and transit, are moving towards SMSs.

Not only do they improve safety, but such systems save money by gathering data and continually assessing and mitigating risks before catastrophic events occur. SMSs can also reduce the need for regulation because individual entities are already actively managing risks, reflecting a smarter, better way to conduct business.

Chao faces a daunting task. But success is an absolute economic and societal imperative, and she has the tools to deliver solutions.

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