



ABC's Weekly Federal Legislative Update February 8, 2021

Introduction

Tomorrow the Senate will hold the impeachment trial of former President Trump on the charge of inciting an intersection at the U.S. Capitol. This is the first time that a President has been impeached twice. House Democrats will begin to work out details of President Biden's COVID 19 Relief Package. Last week they passed budget resolution which would allow them to use a mechanism to pass the legislation with 51 votes in the Senate. Below is news from Washington, D.C.

Administration

[Nomination of Michael Regan to be Administrator of EPA](#)

The following story discusses Michael Regan's confirmation hearing before the Senate Environment and Public Works Committee.

Kevin Bogardus of [E&E Daily](#) wrote on February 4, "Michael Regan's confirmation hearing yesterday focused on the challenges ahead for EPA.

"In just under three hours, the Senate Environment and Public Works Committee questioned President Biden's EPA administrator nominee about air, climate and water regulations; his plans to rebuild the agency; and how he will handle complex issues around biofuels and pesticides that have vexed past administrators.

"Regan drew upon his experience as secretary of the North Carolina Department of Environmental Quality. He promised collaboration, dialogue and transparency if he is confirmed as EPA administrator.

"Republican senators centered their questions not on him but on the White House, especially a series of ambitious executive orders dealing with climate change, and even the Obama administration, where Biden served as vice president.

"There were few fireworks at the hearing but rather kudos for the nominee, so it's likely now a question of when, not if, Regan will be confirmed as EPA's 16th administrator.

“As the Senate's organizing resolution passed soon after Senator Shelley Moore Capito (R-WV), the panel's new ranking member, gavelled out, Senator Tom Carper (D-Del.) will take charge to advance Regan's nomination. The new EPW chairman told E&E News the nominee did "an exceptional job" at the hearing.

“Carper did not commit to holding a markup on Regan next week, when the Senate trial for former President Trump's second impeachment is set to begin.

“But he said the cordial tone yesterday, as well as support for Regan from agriculture and environmental groups, could help "expedite" his nomination.

"It may not be unanimous, but I think he'll get a strong bipartisan vote, and a strong bipartisan vote out of committee will help us get a vote on the floor," Carper said.

“Here are five takeaways from Regan's confirmation hearing yesterday.

Who's *really* in charge at EPA?

“Familiar faces have returned to government as part of the Biden administration. Now both as top White House officials, former EPA Administrator Gina McCarthy is leading domestic climate policy while former Secretary of State John Kerry is heading up international climate policy. That has sparked questions from Republicans about whether Regan would report to McCarthy or Kerry.

"If you're confirmed, who's going to be in charge below President Biden?" Senator Dan Sullivan (R-AK) asked.

“Regan's reply: "Where the decisions are in EPA's purview, I can assure you that I will be leading and making those decisions, and I will be accepting the accountability for those decisions."

“McCarthy and Kerry, not Regan, frustrated Republicans at yesterday's hearing.

"They've already established themselves as the unconfirmed and unaccountable czars on climate," Capito said. "I am concerned that this is shaping up to be a third Obama administration."

Climate still a flashpoint

“Biden has promised an aggressive whole-of-government approach to fighting climate change. EPA will likely lead the attack, yet how that response shapes up is yet to be seen, including how to deal with the now-scrapped Affordable Clean Energy rule.

“Regan parried a question from Capito on the Biden's administration's strategy for dealing with a recent federal appellate court's ruling that struck down the rule. It had

been the Trump administration's replacement for the Obama-era Clean Power Plan, which was intended to cut coal-fired electricity plants' emissions of greenhouse gases.

"The ruling presents a significant opportunity for EPA "to take a clean slate and look at how do we best move forward," he told Capito when asked whether the administration would now resort to a new version of the Clean Power Plan.

"Regan added that he would consult all relevant parties before deciding how to proceed, "whether that be a rulemaking or whether that be voluntary."

"More definitively, he later backed the Clean Air Act waiver that allows California to set vehicle greenhouse gas emission standards tougher than the federal government's.

"I believe in following the law and following established precedents, and I think that the California waiver exists for a reason," Regan told Senator Ed Markey (D-MA).

"The Trump administration's 2019 decision to revoke that waiver is now embroiled in lawsuits brought by California and environmental groups. On Monday, the Biden administration asked the U.S. Court of Appeals for the District of Columbia Circuit to freeze proceedings in the litigation while it ponders its next move.

"Bipartisan pressure on biofuels

"Farm state senators in both parties have tortured EPA over its handling of the renewable fuel standard. The biofuel mandate often pits powerful interests like oil and agriculture against each other.

"Senator Joni Ernst (R-IA) pressed Regan on how he would manage biofuels as administrator. Decisions on small refinery exemptions and biofuel petitions are waiting on his desk if he is confirmed, she said. Ernst also pushed for a commitment from Regan for "a strong and growing role" for ethanol.

"Yes, I can commit to the fact that the president has indicated that agriculture will have a seat at the table in this administration, especially as it relates to climate change," Regan said.

"Senator Tammy Duckworth (D-IL) also asked the EPA nominee about biofuels. "Will you prioritize the faithful execution of the bipartisan RFS program just as Congress intended?" Duckworth asked.

"You have my commitment that we will take a look at the RFS program, and we will introduce some transparency into that program," Regan replied. "We will let science lead us, and we will follow the letter of the law as it was intended for that program."

Environmental justice boost

"As North Carolina's DEQ secretary, Regan brought a new focus on environmental justice for the department. He created an environmental justice advisory board and has talked often about how environmental protection needs to ensure everyone has clean air and water.

"He plans to up EPA's game on the issue as well.

"Environmental justice is something that is near and dear to my heart," Regan said at yesterday's hearing.

"The nominee said he wanted to bring on an environmental justice adviser to the administrator. In addition, EPA's civil rights office will be reviewed, and the agency will request more budget funds for the effort.

"EPA will "look at a restructuring and reorganization to be sure that our Office of Civil Rights has adequate staff from every media office that is paying attention specifically to environmental injustice," Regan said.

"You all will hear from me frequently that we do need or will need additional resources if we are to commit to solving environmental justice and equity issues," he said.

Republican support

"After Biden tapped Regan to lead EPA in December, representatives for North Carolina Senators Richard Burr and Thom Tillis didn't respond to E&E News' questions about whether they would support their home state nominee.

"So it came as a surprise when both Republicans enthusiastically backed Regan at yesterday's hearing. Burr and Tillis introduced the nominee.

"Michael's a good man. He's a good husband. He is a great father. And I look forward to supporting his nomination on the floor," Burr said.

"Tillis also offered support for Regan, saying he may disagree with him on environmental policy at times but believes the nominee "will be somebody we can rely on to be fair."

"At the end of day, we have a great, well-qualified nominee before us, and I encourage your support," Tillis said.

"Several EPA administrators have been cleared on a voice vote or unanimous consent in the Senate. But the position's confirmation vote has become increasingly partisan in recent years.

“McCarthy's approval was held up for months until she was confirmed on a 59-40 vote. Her successors in the Trump administration, Scott Pruitt and Andrew Wheeler, had even less support, with 52-46 and 52-47 votes confirming them, respectively.

“Regan, coming from a red state with a reputation for working across the aisle, may lower the temperature in the battle over who leads EPA.

“And while Republican senators took shots at Biden's climate agenda at yesterday's hearing, many had kind words for Regan.

"You've been an excellent witness," Capito told him as she adjourned yesterday's hearing.

Reporters Timothy Cama, Sean Reilly and Nick Sobczyk contributed.

The following story discusses Tom Vilsack's confirmation hearing before the Senate Agriculture Committee

[Nomination of Tom Vilsack to be USDA Secretary](#)

On February 2, Marc Heller of [E&E News PM](#) reported, “The Senate Agriculture Committee approved Tom Vilsack for Agriculture secretary today, swiftly advancing his nomination for a second stint heading the Department of Agriculture.

“The committee vote came less than three hours after his confirmation hearing, a testament to Vilsack's wide support within both parties in Congress.

“Vilsack, the 70-year-old former two-term governor of Iowa, faces an easy confirmation on the Senate floor, barring surprises. Once confirmed, he'll become one of the Biden administration's key officials on climate policy, as well as a voice for rural America in an administration that came to power mainly on political support from cities and suburbs.

"Secretary Vilsack has the experience and vision that our farmers, families, and rural communities need now more than ever," said the committee's incoming chairwoman, Senator Debbie Stabenow (D-Mich.), in a statement after the voice vote, where no objections were made. "I look forward to his quick confirmation."

“At the hearing, Vilsack highlighted his advocacy for agriculture's involvement in tackling climate change. That includes voluntary programs to encourage farmers to sequester carbon through soil practices and recapturing farm waste, for instance. And he pledged support for crop-based fuels as a more climate-friendly transportation alternative.

“He faced little contention, although Republican Senator Joni Ernst, a fellow Iowan, said the Obama administration in which Vilsack served hadn't been fully supportive of biofuels under the renewable fuel standard. She urged Vilsack to remain a strong ally for the RFS, which is run by EPA.

“At the hearing, ranking Republican John Boozman of Arkansas said he expects Vilsack to work with Congress as he did during his eight years as secretary under President Obama from 2009 to 2017.

"I'm a strong believer that past performance is indicative of future performance," Boozman said."

Congress

House Democrats Introduce the GREEN Act

Late last week, the House reintroduced the GREEN Act. The act contains many of the tax policy priorities of the ABC including a new 30% tax credit for RNG. This legislation still has a long path to becoming law but is a good indication of the green tech priorities of the House and Administration.

Greenwire reporter, Jeremy Dillion, published on February 5, "House Democrats reintroduced a sweeping clean energy tax package today that would extend and expand a host of credits dedicated to electric vehicles, renewable energy, efficiency and other technologies.

"The legislation will likely become a major piece of the Biden administration and Congress' approach to climate action, most likely as part of a broader infrastructure push.

"The measure passed the House last summer as part of the Democrats' broad \$1.5 trillion infrastructure package.

"Climate change is the most pressing issue of our time and we must act boldly to address this existential threat," said Representative Mike Thompson (D-Calif.), a senior member of the Ways and Means Committee, in a statement. "That's why I am proud to again introduce the GREEN Act, a sweeping bill that will use our tax code to help tackle climate change."

"The bill would extend to 2026 the production and investment tax credits for wind and solar energy, with the solar credit staying as is and the wind credit continuing at its 60% phase-down level. The bill would enable energy storage technologies to qualify for the investment tax credit.

"The carbon capture and storage credit, known as 45Q, would also get an extension to 2026, and companies would be able to get direct payments, a top industry priority.

"The credits received short-term extensions as part of the broader pandemic relief and spending omnibus package Congress passed at the end of last year.

“Republicans have looked to squash renewable tax credits, fearing they prime markets against traditional generation sources at the cost of grid reliability.

“Democrats are also looking to revive and expand a series of electric vehicle credits meant to encourage the purchase of the next generation of cars and buses.

“The credit had expired, with most car companies hitting the threshold for its use. The new credit would beef up that limit from 200,000 to 600,000 units, among other tweaks.

“The bill would jump-start the 48C tax credit to promote clean energy manufacturing, a priority for Senate Energy and Natural Resources Chairman Joe Manchin (D-W.Va.) and increasingly a way to encourage domestic clean energy manufacturing.

"Workers must be at the center of a transition to a green economy, and this bill will help our country better prepare for the needs of the future," Ways and Means Chairman Richard Neal (D-MA) said in a statement.

“The legislation's reintroduction comes as a coalition of more than 45 clean energy advocates has called on the White House to follow through on its climate ambitions by pursuing a tax policy that promotes clean energy technologies.

"While the clean energy provisions in last year's spending package provided emergency relief and a down payment on the comprehensive federal policy response we know is required, it is imperative that we now move beyond endless cycles of short-term stopgap measures and towards a long-term clean energy and clean transportation tax platform capable of effectively addressing the climate crisis," the groups **wrote** in a letter.

“Climate advocates are calling on Democrats to do more than just a reintroduction. The Sierra Club criticized the "Growing Renewable Energy and Efficiency Now (GREEN) Act" as lacking the needed ambition to promote a cleaner energy supply.

"A new and improved 'GREEN Act' needs to include a broader set of incentives, and a longer period of support for them," Sierra Club Deputy Legislative Director Matthew Bearzotti said.

"We need a bill that is bold enough to fully unleash a clean energy transition equal to the challenge of the climate crisis that cuts dirty subsidies, which prop up detrimental energy sources, and which helps advance environmental justice for communities nationwide," he said."

[Senate Agenda: Schumer Turns to Climate Change](#)

Last week Democrats and Republicans were able to come to a power sharing agreement enabling the Senate to be formally organized. Senator Chuck Schumer (D-

NY) takes over as Majority Leader. The story below outlines his climate change priorities.

Geof Koss and Nick Sobczyk of Greenwire wrote on February 3, "Senate leaders have finally struck a power-sharing agreement that will allow Democrats to officially take the reins of committees, with Majority Leader Chuck Schumer calling on incoming chairs to put climate change at the top of the agenda.

"After weeks of negotiations, the New York Democrat announced this morning that the Senate will vote today on the organizing resolution, which sets the chamber's rules and committee rosters for both parties for the 117th Congress.

"I'm confident our members are ready to hit the ground running on the most important issues that face our country," Schumer said.

"Senate Democrats are not going to waste any time taking on the biggest challenges facing our country and our planet," he added.

"The organizing resolution allows Democrats to formally take over Senate committees, which technically have remained in the hands of Republicans even though Democrats control the 50-50 chamber because of Vice President Kamala Harris' tiebreaking vote.

"GOP chairs have yielded the gavels to their counterparts as a courtesy, including for confirmation hearings on President Biden's Cabinet nominees.

"Schumer made clear today that the incoming Democratic panel leaders will get to work immediately on climate change.

"I've already instructed the incoming Democratic chairs of all relevant committees to begin holding hearings on the climate crisis in preparation for enacting President Biden's 'Build Back Better' agenda, which includes major climate legislation," Schumer said on the floor.

"The Energy and Natural Resources Committee began that process this morning with a hearing examining energy-sector trends and past progress in addressing climate change.

"As we all know, climate change touches virtually every aspect of our economy and involves virtually every aspect of public policy," Schumer said.

"So as the Biden administration prepares a whole-of-government approach to combating climate change, the Democratic majority will pursue a whole-of-Senate approach, as well."

Power-sharing deal

“Although the organizing resolution is normally passed without fanfare in the opening days of a new Congress, there were several complicating circumstances that contributed to this year's delay.

“For starters, control of the chamber was unknown until the twin Jan. 5 Senate Georgia runoffs, in which Democrats Raphael Warnock and Jon Ossoff ousted the GOP incumbents and produced the 50-50 split. That meant that Republicans held the majority until the Jan. 20 inauguration, when Harris was sworn in.

“Text of the organizing resolution wasn't available at press time, but Schumer and Minority Leader Mitch McConnell (R-KY) have been negotiating from the power-sharing deal struck in 2001, when the Senate was also split 50-50.

“McConnell wanted the agreement to rule out the possibility of eliminating the legislative filibuster, a demand Schumer would not agree to.

“McConnell eventually yielded after moderate Democrats Joe Manchin of West Virginia and Kyrsten Sinema of Arizona pledged that they would oppose efforts to kill the filibuster.

"It took some time to work that out," Majority Whip Dick Durbin (D-Ill.) told reporters today. "It slowed us down."

[Report: Reconciliation Could be Used for a Clean Energy Standard](#)

Evergreen Action issued a report last week outlining a process for using budget reconciliation to pass a clean energy standard. The story below discusses the report's findings.

On February 4, Nick Sobczyk of [Greenwire](#) reported, “A clean electricity standard could be engineered to pass through budget reconciliation, progressives argued in a new report, potentially allowing a marquee decarbonization policy to skirt the Senate filibuster.

“With a few tweaks, a clean electricity standard, or CES, could be designed to directly affect federal spending and revenues, Evergreen Action said in a report issued today.

“That would allow Congress to meet President Biden's campaign pledge to decarbonize the power sector by 2035 using budget reconciliation, a process that allows certain spending and tax legislation to pass with a simple majority and a crucial tool for Democrats looking to bypass Republican opposition in the 50-50 Senate.

“The report could be an influential piece of the debate about climate policy among progressive activists and Democrats. It's backed by several prominent Democratic lawmakers, including Representative Paul Tonko (D-NY) and Senators Ben Ray Lujan (D-

NM), Martin Heinrich (D-NM) and Tina Smith (D-MN), the lead sponsor of the "Clean Energy Standard Act" during the last Congress.

"A CES, Smith said, "should be the center of an infrastructure plan that we look forward to working on after we get through the COVID recovery package."

"The most important thing is that we listen really carefully, we build a broad coalition and we keep all of the options that we have on the table to get this done, including reconciliation," Smith said during a virtual event with Evergreen Action this morning.

"The report comes amid considerable discussion about what, exactly, Democrats could do through reconciliation and whether they should instead look for Republican support to clear the 60-vote filibuster threshold in the Senate.

"Even if they can move a bill with 51 votes, Democrats are contending with moderates like Senator Joe Manchin (D-WV), who has signaled that he is open to a CES if it were done "in a way that you don't create one vast economic depression on the price of coal".

"House Energy and Commerce Chairman Frank Pallone (D-N.J.), a top backer of clean electricity standards, also cast doubt this month on the prospects that a CES could pass the "Byrd rule," the procedural hurdle that determines which policies are eligible for reconciliation.

"For that reason, some lawmakers and advocates have talked up the idea of passing a carbon tax, seen as easier to get past the Byrd rule, and Smith said that should be a consideration as well.

"I don't believe that we necessarily face a choice between the clean electricity standard and some sort of carbon tax," she said.

"Evergreen Action's report outlines a path to Senate passage for a CES that would decarbonize electricity generation by 2035, by either scrapping the filibuster or using reconciliation.

"While some have voiced skepticism about the possibility of passing CES legislation via reconciliation, we argue strongly and unequivocally that a CES can absolutely fit within the confines of the 'Byrd Rule' that defines its terms," the report says.

"A CES could, for instance, be designed as a system within the federal budget, where generators are issued credits for their zero-emissions electricity that come with grant funding, much like the Section 1603 payment in lieu of tax credit program enacted under the 2009 stimulus.

“Another similar reconciliation-friendly design, according to the report, would be a “reverse auction” system, in which the federal government would purchase zero-emissions credits from generators.

“The report lays out several alternatives to a traditional CES, including block grants for states that move toward clean power and taxing utilities’ carbon-intensive power sources.

“It also notes that many of innovation and just transition policies that lawmakers often talk about could be done through reconciliation, a potentially crucial step to draw support from moderates concerned about fossil fuel constituencies.

“It’s really important to remember that the package that we’re talking about following from the COVID package is going to be an investment package in the clean energy economy,” said Leah Stokes, an assistant professor of political science at the University of California, Santa Barbara, and a co-author of the report.

“We must put support for the fossil fuel transition at the heart of this package to really make sure that all parts of the country can come alongside for the transition,” Stokes said.

“Smith said Democrats should take a “place-based strategy” to decarbonization policy to make sure they are considering the fossil fuel communities that would be affected in the transition.

“You cannot just shift opportunity from one state to another state and not fill the gap that creates in places like West Virginia,” Smith said.

“You have to really listen and understand what the issues are in the states where these moderate Democrats and even moderate Republicans are working,” Smith added.

“One of the mistakes that we have made in talking about the clean energy transition is that we have tended to discount the impact of that transition on people that have worked in the fossil fuel energy world their entire careers.”