



## ABC's Weekly Federal Legislative Update June 28, 2021

### Introduction

Late last week, President Biden announced that an agreement had been reached between a bipartisan group of Senators on an Infrastructure package. However, he also indicated that he intended to move a larger package in parallel through Congress using budget reconciliation that would contain other priority items supported by more progressive Democrats. These priority items include programs and funding related to climate change, renewable energy tax credits and social programs. As of today, President Biden has stated that these bills are not linked. Conversely, the backtracking on the larger package may imperil progressive support of the bipartisan infrastructure package. Support for both packages is very much in flux. The following is news from Washington, D.C.

### Administration

#### Renewable Fuel Standard: [Supreme Court Ruling](#)

***The Supreme Court announced its decision regarding whether refineries must consistently file for waivers as the 10<sup>th</sup> Circuit had ruled earlier. The Court determined that the three refineries in the case were rightly granted waivers to the RFS even though they had not consistently petitioned for such waivers. This decision was concerned a setback to biofuel producers.***

Jeremy P. Jacobs of [Greenwire](#) wrote on June 25, "The Supreme Court today backed three small refineries' bid for an exemption to renewable fuel blending requirements in a decision that boiled down to a robust debate over the meaning of the word "extension."

*"HollyFrontier Cheyenne Refining LLC v. Renewable Fuels Association* concerns whether refineries can obtain such an exemption from EPA even after they had let their previous one lapse.

"Justice Neil Gorsuch, a Trump appointee who wrote for the majority in a 6-3 decision, squared off against Justice Amy Coney Barrett, another Trump appointee who penned the dissent.

"Using analogies to term paper deadlines, hotel stays and even parental leave, the two duelled over the crux of the case: Does the law post a continuity requirement to the extension

provision? Meaning, can EPA issue a new exemption to a refinery that had one at one point after the renewable fuel standard was established in 2005, then didn't have one, and then asked for another?

“Gorsuch concluded that it could, finding “textual clues” in other parts of the law.

“It is entirely natural — and consistent with ordinary usage — to seek an ‘extension’ of time even after some lapse,” he wrote. “Think of the forgetful student who asks for an ‘extension’ for a term paper after the deadline has passed, the tenant who does the same after overstaying his lease, or parties who negotiate an ‘extension’ of a contract after its expiration. “In other words,” he added, “a timer can start, run, finish and then *restart*.”

“Barrett, who was joined by Justices Sonia Sotomayor and Elena Kagan in her dissent, wasn't convinced and accused Gorsuch of taking “HollyFrontier's framing and running with it.”

“She said Gorsuch's reaching of “extension” is possible but “forgoes the ‘far more natural reading’ of extend.”

“One would not normally ask to ‘extend’ a newspaper subscription long after it expired,” she wrote.

“Congress created the RFS program in 2005 and 2006 to require U.S.-produced transportation fuels to blend in renewables like ethanol. It authorized EPA to increase the amounts of renewables included over the years.

“The law carves out some exemptions for small refineries that blend 75,000 barrels per day or less. Due to concerns about the economic burden the blending requirements would pose on those refineries, EPA issued a blanket exemption through 2011. Refineries could get a two-year extension after that and petition for more going forward. The number of such waivers that EPA grants is limited and varies; it granted eight in 2013 and 31 in 2018, for example.

“At issue in the current case is three such refineries seeking exemptions in 2017 and 2018 for “disproportionate hardship.”

“EPA granted all three during the Trump administration.

“Other fuel producers objected and sued.

“The 10th U.S. Circuit Court of Appeals sided with them, and today the Supreme Court reversed that decision.”

[Infrastructure: President Biden Highlights Climate Provisions in Bipartisan Deal](#)

***The following story discuss various aspects of the bipartisan infrastructure bill that focus on climate.***

On June 24, Emma Dumain of [E&E Daily](#) reported, “President Biden this afternoon defended the \$1.2 trillion infrastructure package he negotiated with a bipartisan group of senators, calling it

both a compromise with conservatives and a historic victory in securing the priorities he laid out in his original American Jobs Plan.

“In a half-hour news conference from the East Room of the White House, Biden focused heavily on the line items in the agreement aimed at protecting the environment, a nod to the progressives and climate hawks skeptical that any bill hashed out with Republicans would come close to making the ambitious investments needed.

"This makes key investments in putting people to work all across the country building transmission lines, creating a power grid to be more energy-efficient and resilient and be able to withstand extreme weather and the climate crisis," Biden said in remarks today.

“He boasted the proposal would "make coastlines and levies more resilient," fulfill his commitment to building a national network of 500,000 electric vehicle charging stations and replace lead pipes and service lines in schools and childcare centers around the country.

“A fact sheet on the "Bipartisan Infrastructure Framework" also noted there would be funding made available for "legacy pollution cleanup" and electrifying school and metro buses in communities plagued by harmful emissions — two major environmental justice initiatives.

“But while Biden rejected implications that his compromise with lawmakers shortchanged a meaningful response to climate action — "I wrote the bill on the environment," the 36-year veteran of the Senate stage-whispered at one point, without specifying what bill he was referring to — he also promised he'd fight to secure other investments.

"I made it clear today that other things with the environment are going to be done," he said, listing as one example "a \$300 billion tax cut for dealing with the environment."

“Biden also confirmed that he supported the strategy of congressional Democratic leaders to refuse to consider the bipartisan infrastructure bill without also passing a bill through reconciliation that includes these additional climate investments alongside elements of his American Families Plan that Republicans rejected as not being sufficiently related to the traditional definition of "infrastructure."

“Reconciliation refers to the procedural maneuver that allows a bill to advance through the Senate without being subject to a filibuster.

“This is welcome news for progressives, who have been repeating the message "no climate, no deal" for the past several weeks as Biden refused to end negotiations with Republicans, making liberal lawmakers and advocates fearful the end result would be weakened environmental language.

"While there are some necessary provisions in the bipartisan proposal, it does not act on climate at the scale that science and justice require or meet the commitments that the Biden-Harris administration made to act on climate and environmental justice," said League of Conservation Voters President Gene Karpinski in a statement.

"Moving forward on this bipartisan framework alone would send a message to communities across the country that their future is not important."

“In a 50-50 Senate, every Democrat would need to be on board with the reconciliation strategy, and there is some anxiety that moderates like Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) would refuse to go along with the plan in advance of setting up both bills for floor votes, which has emerged as a condition of supporting the bipartisan plan.

“Manchin has been unclear on where he stands on this matter. While this morning he said he wouldn't support a reconciliation measure without first seeing what it contained, by the afternoon he told reporters that "reconciliation is inevitable."

“But although two dozen senators and the White House took multiple victory laps throughout the day on reaching a deal after weeks of tense negotiations, it's still unclear where Republican leaders in both chambers will stand on the compromise or whether they will accept the proposed pay-fors, which include sales from the Strategic Petroleum Reserve and reinstating Superfund fees for chemicals.

“Senate Minority Leader Mitch McConnell (R-KY) told reporters today he was "still listening."

“Meanwhile, though Senate Majority Leader Chuck Schumer (D-NY) said he wanted to move infrastructure through his chamber in July, Senator Mark Warner (D-VA), one of the bipartisan negotiators, said the two-pronged solution will take time to prepare for floor consideration.

"Even if this was super-fast-tracked, this will take weeks to write," Warner said."

*Reporter Nick Sobczyk contributed.*

## **Congress**

### [Senate Passes Bill That Would Establish Voluntary Carbon Credit in the Agriculture Sector](#)

***Last week, the Senate passed the Growing Climate Solutions Act which would establish a voluntary carbon credit system for the agriculture sector. The bill had widespread bipartisan support on the Senate but faces an uphill battle in the House.***

Greenwire reporter Nick Sobczyk published on June 24, “The Senate this morning passed legislation to make it easier for farmers to access carbon markets in what boosters say could be a critical step to address climate change in the agricultural sector.

“The "Growing Climate Solutions Act," S. 1251, cleared the Senate on a 92-8 vote after lawmakers rejected an amendment from Senator Mike Lee (R-UT).

“Senate Agriculture, Nutrition and Forestry Chairwoman Debbie Stabenow (D-MI) called it a "landmark piece of legislation to address the climate crisis."

"What we are doing is voluntary, producer-led and bipartisan, and to me and the Agriculture Committee, those are the magic words," Stabenow told reporters.

“The bill is supported by farm groups and the U.S. Chamber of Commerce, and it has a large set of bipartisan co-sponsors.

“But it faces a more difficult road in the House amid opposition from some Republicans and progressive environmental groups, which argue it could create a certification system vulnerable to fraud and potentially allow companies to continue increasing emissions by purchasing offsets.

“Stabenow nonetheless said President Biden "enthusiastically supports" the legislation, and some climate hawks see carbon markets as a key piece of the emissions puzzle.

"As a piece of infrastructure, a verifiable carbon credit in the agricultural sector is perhaps the most important tool to deal with climate change in that sector," Senator Sheldon Whitehouse (D-RI), a co-sponsor of the bill, told reporters.

"And the fact that this has north of 80 votes on the Senate floor right now and climbing is a terrific sign about the prospects for bipartisanship."

“Agriculture currently makes up some 10% of U.S. greenhouse gas emissions, but farmers can also sequester carbon via methods like reduced soil tillage and tree planting.

“Originally introduced by Stabenow and Senator Mike Braun (R-IN), the bill would set up a Department of Agriculture program to certify companies and third-party providers in carbon credit markets in an effort to boost voluntary participation by farmers.

"The markets are private and they are voluntary, but they haven't been strong because there hasn't been a system in place that people can trust to be able to do this, and so that's what we are doing is creating the integrity and the structure and the expertise," Stabenow said.

“Lee, however, argued that it would only create new burdens for the market. "It would insert the federal government into a market that is blossoming on its own, imposing burdensome regulation, and picking winners and losers in the carbon credit marketplace," Lee said on the floor this morning.

“His amendment, which failed on a 11-89 vote, would have struck the certification system from the bill, replacing it with an informational program for farmers.

“Braun said the certification system would "democratize the process" and allow smaller farmers to access carbon markets through USDA, an agency they trust.

"This goes through a familiar portal for them and gives that same access to smaller landowners," Braun told reporters.

"This enables them to add a little bit of value to their bottom line for being good stewards of the land," Braun added."

#### [Appropriations: House Panel Approves Climate Focused Agriculture Bill](#)

***The House is working through their appropriations process this month with the aim of finishing their version of the bills by August recess. Last week they passed the Appropriations bill out of the subcommittee.***

Rob Hotakainen of [Greenwire](#) wrote on June 25, "A House Appropriations subcommittee today signed off on a bill that would boost spending on agriculture and related programs by more than 10% in fiscal 2022, with new money aimed at battling climate change and conducting more farm research.

"On a voice vote, the Agriculture, Rural Development, and Food and Drug Administration Subcommittee passed a bill that would set spending at \$26.6 billion for the fiscal year that will begin on Oct. 1, an increase of \$2.85 billion from the enacted level for fiscal 2021.

"During a brief markup this morning, Representative Sanford Bishop (D-GA), the panel's chairman, called it "a great bill that will help millions of Americans."

"The legislation now goes to the full House Appropriations Committee, which is expected to vote on the measure next Wednesday.

"The bill would set aside \$347.4 million to address climate change, paying for more research to monitor and mitigate the effects of climate change and to accelerate "climate smart agriculture practices," including the use of more clean energy technologies to reduce greenhouse gas emissions.

"Spending on agricultural research would hit \$3.324 billion, an increase of \$226.5 million from fiscal 2021. Much of the new money would pay for more research to fight crop diseases, improve food safety and water quality, and increase farm production.

"The plan would also continue a program that allowed more than 100,000 Americans to gain access to rural broadband last year. Spending on the program would be set at \$907 million, an increase of \$115 million above this year.

"Other provisions include \$1.87 billion for farm programs, an increase of \$48.5 million from 2021, \$1.15 billion for food safety and inspection programs, and \$1.06 billion for conservation programs.

"The bill would set funding for the Agriculture Department, Food and Drug Administration, Commodity Futures Trading Commission, and Farm Credit Administration.

"In May, President Biden recommended a larger increase for the agencies, proposing that spending be set at \$27.8 billion in fiscal 2022, an increase of \$3.8 billion from this year. Separately, the Military Construction and Veterans Affairs Appropriations Subcommittee approved its own spending bill with money for chemical cleanups and climate resilience.

"Representative Elise Stefanik (R-NY) attached a \$27 million earmark to address water supply issues at Fort Drum, one of the bases where PFAS chemicals have been detected."

## **Other**

[North Carolina: Farm Bill That Would Boost Biogas Systems Nears Approval](#)

Published on June 25. "The North Carolina Legislature neared final approval yesterday of its annual farm bill, which includes the creation of a streamlined method for hog farms to receive environment permits to convert liquid waste into consumer natural gas.

"The House voted 75-32 in favor of the measure, which makes changes in more than a dozen categories related to agriculture. It now returns to the Senate, which approved a similar version last month.

"This bill is a commonsense approach to maintaining a safe, economical sustainable supply of food," Representative Jimmy Dixon, a Duplin County Republican, said during floor debate.

"The provision receiving the most discussion in both chambers involved the proposed "general permit" that the Department of Environmental Quality would issue for animal farm operations that allow the owner to construct and operate a farm digester system. Currently, these operators seek individual permits, of which about two dozen have been issued over the past decade.

"Interest is growing in biogas because of the potential revenue source. Pork giant Smithfield Foods and Dominion Energy already are developing a project in which methane gas trapped from covered lagoons storing the waste will be pumped to a refining facility proposed in Duplin County. Bill supporters said the biogas process is similar enough with any lagoon and spray-field waste system for general permits to make economic and regulatory sense.

"Some Democrats complained that the permit process would be too swift and could omit concerns over air quality related to the methane gas collected and shipped.

"The legislation also doesn't address efforts started over 20 years ago to improve waste technologies that would make hog manure less damaging to the environment but so far have not been deemed economically feasible. Residents living near operations have complained for years about the stench and the air, resulting in expensive litigation.

"Representative Kandie Smith, a Pitt County Democrat, pointed to her worries that the paths of some biogas pipelines could run through communities with disproportionate minority populations.

"This bill adversely affects the minority population, and it is not inclusive of addressing those concerns," Smith said. "We cannot leave these individuals behind." An amendment by Democratic Representative Raymond Smith of Wayne County to remove the general permit directive was defeated.

"But more than a dozen House Democrats joined Republicans in backing the full bill. Representative Billy Richardson of Cumberland County voted for the bill after receiving assurances from Dixon that encouraging biogas operations would result in less pollutants being emitted from lagoons that would now be covered.

"I think it's a step in the right direction," Richardson said. — *Gary D. Robertson, Associated Press*"