



ABC's Weekly Federal Legislative Update July 26, 2021

Introduction

Negotiations continue on the bipartisan infrastructure package, but talks have hit several obstacles over the past few days. Points of contention include transit funding, spending levels on water projects, whether federal backed projects should be required to pay a “prevailing wage” as well as how to reallocate unspent COVID-19 relief funding to offset spending. The White House and lead Republican negotiators are continuing discussions but patience is fraying. Congress has scheduled its five-week August recess to commence the week of August 9. Additionally, members will soon be facing both federal funding and debt ceiling deadlines which places further pressure on members to conclude Infrastructure talks. Below is news from Washington, D.C.

Administration

[Whitehouse Details Environmental Justice Plans](#)

The following story discusses draft guidance on Environmental Justice being developed by the White House. This document would guide federal agencies as they craft rule makings and other administrative actions and is designed to ensure that disadvantaged communities benefit from energy and environmental spending.

Adam Aton of [Greenwire](#) wrote on July 20, “The Biden administration is beginning to work out the thorniest questions of its environmental justice agenda.

“In a draft guidance document obtained exclusively by E&E News, the White House details how federal agencies should begin the process of ensuring that at least 40% of the benefits from federal energy and environmental spending reach disadvantaged communities.

“Known as the Justice40 Initiative, the framework has already emerged as a source of some friction among the Democratic political coalition. Who counts as disadvantaged, what a benefit means and how to count them will remain ongoing questions. In a nod to those tensions, the administration is emphasizing that the public will still have ample chance to shape the answers.

“The administration named 21 federal programs that will pilot the Justice40 implementation, including flood mitigation grants, the drinking water state revolving fund, grants to remove lead from homes and rural energy financing.

“Agencies will have 60 days to submit plans for those initial programs to the Office of Management and Budget. For the rest of their programs, they’ll have 150 days.

“There is little to no precedent for the federal government taking such a comprehensive review of environmental impacts.

“The administration will continue that historic effort through its other priorities, including the bipartisan infrastructure agreement, according to a statement from acting OMB Director Shalanda Young, Council on Environmental Quality Chair Brenda Mallory and White House domestic climate adviser Gina McCarthy.

“Through the steps we’re taking today, we’re committing to continuing to listen to and learn from impacted communities and those who have been on the front lines as part of our whole-of-government approach to delivering President Biden’s promise to make environmental justice a national priority,” they wrote.

“The guidance outlines some initial standards. It says a final definition of disadvantaged communities will be issued later this year, in tandem with an interactive mapping tool that agencies can use to identify the areas of greatest need.

“That has been a key demand of environmental justice advocates, who say it could bring transparency and accountability to an issue that’s often framed in abstract terms. States like California and Washington use versions of such a tool.

“In the meantime, federal agencies can consider communities as a set of people facing common conditions, even if they’re not in the same place, such as migrant workers. Variables that could define a community as disadvantaged include environmental factors (high cumulative pollution), economic factors (jobs lost to the energy transition), racial factors (high levels of home segregation) and cultural factors (linguistic isolation).

“The programs covered under Justice40 include climate, energy, transportation, housing, workforce training, pollution cleanup and water infrastructure.

“The administration plans to count a wide array of federal investments, including direct payments to individuals, federal procurement and the money it pays federal workers to help those communities.

“Eligible spending could include money appropriated during fiscal year 2021, which began in October under the Trump administration and runs through September.

“The calculation of each programs’ benefits will depend on what the program does — promising a wide assortment of metrics: Hectares of floodplain restored, improvement of public transit accessibility, indoor air quality improvements, farmworker exposure to pesticides and increased access to public health warnings in multiple languages are just some of the many examples of benefits that agencies might use to create their Justice40 methodologies.

“Some advocates have pushed back on calculating benefits that way, preferring the more apples-to-apples approach of comparing investment dollars.

“Benefits are, of course, subjective, while investments are objective,” said Anthony Rogers-Wright, New York Lawyers for the Public Interest’s director of environmental justice and a member of the New York Renews coalition.

“The details of this process will be incredibly important, he said, to ensure that investments aren’t getting double-counted and that the benefits to disadvantaged communities truly do grow as much as the administration promises.

“Rogers-Wright urged the administration to undertake the work quickly to ensure changes are in place before the midterm elections, when Republicans could gain more control over government spending.

“Time is of the essence,” he said. “These communities have been on fire, sometimes literally, but certainly figuratively when you’re talking about impact to public health.”

Congress

Infrastructure

The following two stories examine infrastructure negotiations including outlining some of the points of contention between Democrats and Republicans involved in the discussions.

On July 23, Nick Sobczyk of [E&E Daily](#) reported, “Water infrastructure is emerging as a hurdle for talks on the bipartisan infrastructure bill, with multiple Democrats threatening to vote against the legislation.

“Environment and Public Works Chair Tom Carper (D-DE) said yesterday he would withhold support for the proposal unless Senate negotiators fully incorporate the \$35 billion water package that passed the Senate 89-2 in April.

“We don't get 89 votes for a lot of bills around here,” Carper told reporters. “I want to see it funded in accordance with the way we've written the bill.”

“It’s the latest snafu for the bipartisan proposal, which failed to clear a procedural vote this week with negotiators still trying to iron out the bill text. The group of Senate negotiators are looking to include the surface transportation and water infrastructure bills that have already passed out of EPW in their roughly \$600 billion proposal.

“But multiple members of the panel said the \$35 billion water bill, S. 914, is not fully funded in the deal as it currently stands. The “Drinking Water and Wastewater Infrastructure Act” would reauthorize and boost funding levels for the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.

“The water bill’s lead sponsor, Senator Tammy Duckworth (D-IL), echoed Carper, saying she would vote against the bipartisan proposal unless it is changed. “While I voted to proceed to consideration of a bipartisan infrastructure bill, more will need to be done in order for me to support the current proposal that is being drafted,” Duckworth said in a statement Wednesday.

“The dispute centers on a \$15 billion slice of the water bill that may end up allocated to lead pipe replacement in the bipartisan proposal instead of the state revolving funds, according to Carper and Senator Ben Cardin (D-MD), another senior member of EPW.

“It had to do, as I understand it, with how they set the baseline, so that was an issue that affects the discretion of the appropriators versus making sure of what the authorizers pass will become real,” Cardin told reporters.

“Cardin, however, said the issue would not ultimately affect his vote for the bipartisan proposal. “I think there’s a misunderstanding because as I talked to the members of the [bipartisan] team, they didn’t think they affected the work product of our committee,” Cardin said. “But as explained to us, it does affect the \$35 billion water bill.”

“Carper similarly called the issue “eminently resolvable.” But the bipartisan proposal would likely need most, if not all, of the Democratic votes in the Senate to overcome the 60-vote filibuster threshold, with only a narrow group of Republicans poised to support it.

“The bipartisan group is also struggling to find agreement on transit, with Senator Rob Portman (R-OH) telling reporters that those funds may be left out of the deal if an agreement can’t be reached.

“The Sierra Club yesterday called on the House to add funds for lead pipes and to replace diesel school buses, citing reports that those areas won’t be funded at sufficient levels.

“It would be unconscionable for Congress to pass a major infrastructure deal that asks kids across the country, especially children from communities of color, to keep drinking

lead-contaminated water and breathing diesel-tainted air when we can eliminate both,” Ben Beachy, director of the Sierra Club’s Living Economy Program, said in a statement.

“House leaders, he added, “must be given the opportunity to build on the current Senate proposal and deliver bolder investments that match the scale of our communities’ needs.”

Weekend work

“After slipping past the first deadline this week, negotiators said yesterday they hope to get another crack at the procedural vote as soon as Monday once the legislative text is finished. Barring that, the Senate could have to stick around into the August recess.

“It’s got to happen by Monday,” Senator Jon Tester (D-MT), a member of the negotiating group, told reporters. “If it doesn’t, that’s another week of August that we’re going to be here.”

“Senator Susan Collins (R-ME) told reporters yesterday not to expect text until Monday at the earliest, but she struck an upbeat tone. “Now I realize it’s never over till it’s over and we could still have a monkey wrench thrown in the works,” Collins said. “But I believe we’re definitely on track and that the negotiations are going very well.”

“Senate Majority Leader Chuck Schumer (D-NY) yesterday reiterated that he plans to try to pass both the bipartisan infrastructure package and a budget resolution that includes reconciliation instructions before the August recess, but he did not commit to timing of another procedural vote on the bipartisan plan.

“Speaker Nancy Pelosi (D-CA) said she hopes the Senate will soon come to an agreement on bipartisan infrastructure legislation. But she also stressed, as she has before, that the House would not immediately take up the Senate legislation.

"We will not be taking it up until the Senate passes the reconciliation bill. And the timing of that, of course, is up to the Senate," said Pelosi, referring to the Senate Democrats' proposed \$3.5 trillion budget bill that is expected to include a broad array of climate priorities including an energy tax overhaul, a civilian climate corps and a clean energy standard.

“House Minority Leader Kevin McCarthy (R-CA) also said he could be open to a bipartisan infrastructure deal, but he wants it to include changes to the National Environmental Policy Act.

"We would want to make sure we could make some reforms with NEPA and other [laws] so you wouldn't wait a decade to build these [infrastructure projects] so your money would go further. I think we could find compromise there," he said."

Reporters George Cahlink and Geof Koss contributed.

Infrastructure

E&E Daily reporters Geof Koss and George Cahlink published on July 22, “A bipartisan group of senators remains "optimistic" they can strike an infrastructure deal in the coming days, despite suffering a setback yesterday when the Senate blocked the emerging legislation.

“The senators insisted they are “close” to agreement with Republicans. They've suggested Democrats hold another cloture vote Monday, betting the deal would be done by then and senators would agree to call it up.

“We will continue working hard to ensure we get this critical legislation right — and are optimistic that we will finalize, and be prepared to advance, this historic bipartisan proposal to strengthen America’s infrastructure and create good-paying jobs in the coming days,” said a statement signed by 21 senators who have been meeting behind closed doors for weeks to hatch the agreement.

“The group’s lead negotiators are Senator Rob Portman (R-OH) and Kyrsten Sinema (D-AZ). Other members include Senate Energy and Natural Resources Chair Joe Manchin (D-WV) and senior ENR Republicans Lisa Murkowski of Alaska and Bill Cassidy of Louisiana.

“The comments from the group suggest a bipartisan infrastructure accord remains very much alive in the Senate, even as it suffered its first legislative setback. But it also shows senators are looking for more time to iron out a handful of remaining thorny issues, the biggest being how to pay for a plan expected to cost several hundred billion dollars.

“Senate Budget Chair Bernie Sanders (I-VT), who is not part of the bipartisan talks, offered to tack on additional items to his \$3.5 trillion budget reconciliation bill he expects to move in August as a backup option.

“If the bipartisan bill is not successful, there's no question that we're going to have to add roads and bridges, water systems, wastewater plants, broadband and basically all of the proposals that were in the bipartisan bill,” Sanders told reporters yesterday.

“Some environmental groups suggested Democrats have waited long enough and urged them to either abolish the filibuster to move the infrastructure bill or attach it to the budget reconciliation package, which could pass the Senate with a simple majority.

“Melinda Pierce, legislative director of the Sierra Club, said yesterday’s vote was “the latest proof of the profound extent to which the filibuster is the chief obstacle to enabling Congress to govern our country, and why it needs to go.”

Transit snafu

“One major outstanding issue to a bipartisan deal is funding for public transit, which would receive \$45.5 billion in new spending under the \$579 billion bipartisan framework agreed to last month by President Biden and 22 senators from both parties.

“Complicating the calculus is the fact that the committee of jurisdiction — the Senate Banking panel — has not produced a transit title for the surface transportation reauthorization legislation.

“Both the Environment and Public Works Committee’s surface transportation reauthorization bill, S. 1953, and the Commerce, Science and Transportation panel’s rail and safety title, S. 2016, are anticipated to be included in the bipartisan framework.

“Portman lamented the fact that the Banking Committee has not marked up its portion of the surface transportation bill, as the EPW and Commerce committees did.

“It gives us the ability to use that language and pick a bipartisan product and promote it,” Portman told reporters yesterday, adding that it did not appear that Banking would mark up the transit title any time soon.

“Banking Chair Sherrod Brown (D-OH) blamed ranking member Pat Toomey (R-PA) for the delay. “It’s awfully hard to get an agreement when one of the two players doesn’t particularly support the whole concept of public transit,” Brown said yesterday. Toomey has previously raised concerns over the levels of funding that transit agencies received in COVID-19 relief efforts.

“The GOP proposals are “far too inadequate,” Brown said, saying there was pushback over continuing the 20% share that transit usually receives from federal surface transportation programs.

“There’s been a tradition of fairly good public transit funding, but it doesn’t seem to be on the table from them yet,” he added. “We’re still hopeful.”

“It’s unclear how the bipartisan group will resolve the standoff, Brown said. “The problem is if they wait for us to come to an agreement, Senator Toomey can block the whole bill because his numbers are woefully inadequate,” he said.

“Manchin downplayed the transit hurdle yesterday. “I think that’s going to be worked out,” he told reporters. “Everything looks like it’s going to be worked out.”

House worries

“Senate Majority Leader Chuck Schumer (D-NY) has said that if the bipartisan package isn’t ready by today that he will offer an amendment that includes the EPW and Commerce committee’s passed surface transportation bills, along with the Energy and Natural Resources Committee’s infrastructure package, S. 2377, and the \$35 billion water infrastructure bill, S. 914, which passed the Senate earlier this year. It not yet clear if those bills could advance in one package.

“Meanwhile, House Transportation and Infrastructure Chair Peter DeFazio (D-Ore.), who trashed the Senate’s bipartisan push this week, yesterday released a letter to Democratic leaders expressing concerns that there may be limited opportunity for the House to modify the Senate bill should it pass the chamber.

“We believe that the final package will be strengthened by a negotiation that allows House Members to advocate for the programs, policies, and provisions included in the INVEST in America Act,” wrote DeFazio and 29 Democrats on the T&I Committee, referring to the “INVEST in America Act,” H.R. 3684, that passed the House earlier this month mostly along partisan lines.

“Also yesterday, more than 100 House Democrats urged Speaker Nancy Pelosi (D-Calif.) to include funding to replace all lead pipes nationwide, as Biden has called for. “The scope and gravity of this problem demands an immediate and comprehensive national response,” wrote the Democrats, led by Representative Paul Tonko (D-NY).

“They noted that both Biden’s infrastructure proposals and the bipartisan framework pledged to eliminate lead pipes, and called for the funding to do so.

“Such a push to replace lead service lines, along with additional substantial water infrastructure investments, will not only safeguard our health and our environment, it will also provide family-sustaining jobs now while reducing exposure to lead for generations into the future,” the lawmakers said.

Debt limit warning

“Adding another wrinkle to the infrastructure push were comments by Senate Minority Leader Mitch McConnell (R-Ky.), first reported by *Punchbowl News*, that Democrats should use the reconciliation package to raise the statutory debt limit.

“Schumer called McConnell’s comments “shameless, cynical and totally political.”

"This debt is Trump debt," he said on the floor. "It's COVID debt. Democrats joined three times during the Trump administration to do the responsible thing. And the bottom line is that Leader McConnell should not be playing political games with the full faith and credit of the United States. Americans pay their debts."

“Finance Chair Ron Wyden (D-OR) did not directly answer when asked if Democrats would use reconciliation to raise the debt ceiling but accused Republicans of holding the economy “hostage.”

“We’re not going to let it happen,” Wyden told reporters.

“Should the U.S. government hit the debt ceiling, it can use “extraordinary measures” to continue to make payments without going into default, but the Congressional Budget Office estimated yesterday those measures would likely run out in October or November.”

Nick Sobczyk contributed to this report.

Other

[Report Counters Previous Research on EVs and Climate](#)

A recent report issued by the International Council on Clean Transportation details the climate benefits of electric cars as compared to gas vehicles.

David Iaconangelo of [Energywire](#) wrote on July 21, “The authors of a new analysis are aiming to finally answer a question at the center of environmental policy circles: Are electric cars really better for the climate than gas cars?”

“In a paper released this morning, the International Council on Clean Transportation (ICCT), which frequently works with regulators on emissions testing and famously helped uncover Volkswagen's attempt to evade controls on its diesel vehicles, finds that the answer is yes, most of the time. It concludes that in the U.S., China, India and Europe — the four regions accounting for 70% of the global car market — electric cars emit less greenhouse gas than gasoline cars on a life-cycle basis, despite the predominance of coal in China and India.

“The results show that battery electric vehicles are universally superior,” said Peter Mock, the ICCT's managing director for Europe.

“The paper reports that in 2021, the average battery electric bought by those U.S. drivers would produce 57% to 68% fewer GHG emissions than a gas counterpart on a life-cycle basis. In 2030, those emissions reductions would grow to 61% to 76% — if the country follows its current trajectory toward clean power and Trump-era fuel rules.

“The group also threw its weight behind the concept of mandating zero-emissions car sales by 2035, ruling out any role for gasoline cars — or even plug-in hybrids — in a world that complies with the Paris Agreement.

“To align the world with the Paris climate accord targets, the ICCT wrote, combustion engines should be phased out sometime between 2030 and 2035.

“That would apply not only for light-duty vehicles, which were the subject of the ICCT's emissions modeling, but for heavier trucks and vans as well. Over time, the phaseout would leave battery electrics and their technological cousin, hydrogen fuel cells, as the only cars on the road.

"The main point of the study is, if we want to limit climate change to 1.5-2 degrees Celsius, we need emissions from the global transport sector to be reduced 80% by 2050," said Georg Bieker, author of the analysis and a researcher on the ICCT's Europe team.

“To slash emissions on that scale, "only these two power trains can deliver that," he said of fuel cells and battery electrics.

"Our conclusion is a global one. We need to stop producing gas cars between this [2030-2035] time frame globally," said Bieker.

“The findings are unlikely to end debates over the environmental merits of EVs and gas cars, however.

“Federal researchers last year, for instance, published a peer-reviewed study concluding that in certain coal-heavy pockets of the U.S., like the Midwest and Southeast, EVs could produce three times more pollution than gas cars — although they "almost always" emitted less CO₂.

“The ICCT didn't delve into the varying emissions picture of the U.S. grid, basing their results instead on national averages for the grids' emission intensity — or, in the case of the European Union, the continentwide average. The report also wasn't peer-reviewed, although it did receive a review from life-cycle analysis experts at the International Energy Agency and the International Transport Forum, according to Bieker.

“But the analysis, and its call for a global phaseout of gasoline-powered vehicles, arrives at a decisive moment for transportation policy. European regulators have proposed banning gas car sales by 2035, and the Biden administration is due to release a draft of its vehicle emission rules this month.

“Ahead of the release, environmentalists and other clean transportation advocates have pushed the Biden administration to take a hard line on the auto sector. One letter signed Thursday by 30 groups, including major environmentalists, interfaith organizations and public-health advocates, called on the administration to release standards that set a 2035 goal for 100% all-electric vehicle sales.

“Other advocates are pressuring Congress. Another clean transportation group, Coltura, put out an analysis yesterday urging lawmakers to revise EV federal tax credits so that they better target drivers in the top 10% of gasoline consumption.

“Still, auto industry group and some car-market analysts express skepticism of how quickly consumers will warm to EVs.

“When state governors asked the Biden administration in April to enact a 2035 phaseout of gas cars, the Alliance for Auto Innovation pushed back, accusing those governors of doing too little to advance EV sales in their own jurisdictions. The group is the largest auto-industry representative.

“Public opinion about electric cars in the U.S. is split. About 47% of adults said they would back a 2035 ban on gas-car sales, compared to 51% who oppose it, according to the Pew Research Center. And only 39% of respondents said they were somewhat likely to consider an EV for their next car purchase.

“Although the paper concludes that the average EV releases fewer GHG emission than gas cars, it relied on less conservative assumptions in some cases. For example, it used real-world data for gas consumption, which can be higher than what gets recorded under controlled test conditions.

“That was purposeful, as a way to counter industry-backed studies that cast doubt on EVs' climate significance, according to Bieker.

“We wanted to oppose this by having a really in-depth analysis," he said.”