



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

January 15, 2021

AGENDA ITEM 5.2

TO: Regional Transportation Commission

FROM: Bill Thomas, AICP *BT*
Executive Director

SUBJECT: Federal Report

Monthly update/messages from RTC Executive Director Bill Thomas – *no action will be taken on this item.*

Federal Update for RTC of Washoe County
Prepared by Cardinal Infrastructure and Thompson Coburn
January 15, 2021 Board Meeting
Prepared January 7, 2021

Secretary Chao Resigns

On January 7th, Secretary of Transportation Elaine Chao announced her resignation. Per the order of succession, Steven Bradbury, who currently serves as U.S. Department of Transportation General Counsel and has assumed the duties and responsibilities of the Deputy Secretary is the presumptive Acting Secretary following Secretary Chao's departure on January 11th. However, under the Vacancies Reform Act, the President can make an "acting" appointment for the remaining days of the Administration.

Senate Majority

Democrats gained control of the Senate after both Jon Ossoff and Raphael Warnock won their run-off elections in Georgia. This win means the Senate will have a 50-50 split, with Vice President Harris serving as the tiebreaking vote, giving Democrats a one vote majority. This has only happened three times in United States history: 1881, 1954, and 2001.

The change in majority means Democrats will now have committee chair positions and control over the floor agenda. This will alter committee priorities and likely make it less challenging to confirm Administration nominations. While a Democratic majority will provide many benefits to the party and its agenda, nearly all legislation requires 60 votes in the Senate to advance, which means bipartisan cooperation with Republicans might occur.

We would expect Democrats to use a legislative process known as "reconciliation" to allow for expedited consideration of bills that are related to the federal budget, spending, debt limits, or tax policy. There is an exception that it cannot be used to increase the deficit and bills are subject to the so-called "Byrd Rule" that enables lawmakers to block provisions that are considered extraneous.

In 2001, Republican Leader Trent Lott and Democratic Leader Tom Daschle worked out an agreement to split committee memberships and to pass a rules package that enabled legislation to be brought to the floor regardless of partisan deadlock in those committees. Senate Majority Leader McConnell has previously referred to that 2001 compromise as a model for how he would hypothetically try to structure governance in the chamber in the event of a 50-50 split when asked back in 2016; however, in this case, he would not have the benefit of his party controlling the Executive Branch.

Changes in 117th Congress and Biden Administration

Major federal agency rulemakings, interim rules, guidance, statements of policy, etc. issued as of mid-August, 2020 are eligible for elimination under the Congressional Review Act (CRA). Without being subject to judicial review, Congress may disapprove any rules issued during the last 60 legislative/session days of the previous Congress by passage of a joint resolution which is required to be presented to the President. Historically, the CRA grew out of the loss of the legislative veto which was ruled unconstitutional by the Supreme Court

The CRA is infrequently used and had only been used once prior to the 115th Congress. The Republican Congress had passed multiple joint resolutions of disapproval. Given the significant difference in policy between the Trump Administration and incoming Biden Administration, we may see renewed interest by Democrats to utilize this legislative tool, especially with a Democratic majority in the Senate. Notable rules, guidance, etc., for transportation include:

- Emergencies and the National Environmental Policy Act Guidance
- Program for Eliminating Duplication of Environmental Reviews
- Project Management Oversight
- FEMA interim policy on Work Eligible for Public Assistance
- Final Circular: Guidance on Joint Development

Furthermore, it is very likely that President Biden will revoke, modify or supersede Executive Orders issued by President Trump. Notable Executive Orders include:

- Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (i.e, One Federal Decision)
- Enforcing the Regulatory Reform Agenda (i.e, two-for-one policy)
- Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects
- Buy American and Hire American
- Combating Race and Sex Stereotyping
- Accelerating the Nation's Economic Recovery From the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities
- Regulatory Relief To Support Economic Recovery
- Establishing a Presidential Advisory Council on Infrastructure

Memoranda issued by the Trump Administration can also be amended or rescinded by an Executive Order or another memorandum. Notable memoranda include:

- Memorandum on Reviewing Funding to State and Local Government Recipients of Federal Funds That Are Permitting Anarchy, Violence, and Destruction in American Cities
- One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects
- Memorandum of Understanding Implementing One Federal Decision
- Guidance on Regulatory Reform Accountability

Climate Change Agenda

Climate change initiatives remain at the forefront of the congressional agenda, and include a variety of legislative efforts, including surface transportation reauthorization, infrastructure, tax credits, etc. This priority will now be magnified with Democratic control in the Senate.

The House has reauthorized the Select Committee on the Climate Crisis, which has jurisdiction to investigate "policies, strategies, and innovations to achieve substantial and permanent reductions in pollution and other activities that contribute to the climate crisis...", but no jurisdiction to move legislation. The 116th Congress report of the Select Committee included transportation legislation to advance this mission. Similar to its charge under the previous Congress, the Select Committee will develop a report of policy recommendations, to be submitted to the House by December 31, 2022.

The House rules also provide that "the Chair of the Committee on Budget may adjust an estimate to exempt the budgetary effects of measures to prevent, prepare for, or respond to economic or public health consequences resulting from the COVID-19 pandemic...[or] climate change."

For example, this rule would permit the Committee to no longer factor in PAYGO (pay-as-you-go); a budget rule requiring that tax cuts and mandatory spending increases be paid for by tax increases or cuts in mandatory spending. At this time, there are no clear parameters on what is eligible under this provision; however, public transit, congestion mitigation, and other issue areas may qualify.