



Southwest Association of Rail Shippers Legislative Update

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Elections Have Consequences

- New President, new Administration, very different policies
- Senate 50-50, but now under Democratic control because Vice President Harris can break ties (as she first did with Budget Reconciliation Act)
- Democratic control of House narrowed – currently 221-211 with three vacancies
- STB Chairman is now Marty Oberman; former Chairman Ann Begeman is in her “holdover” year, so President Biden is able to appoint a third Democrat
- Two new Board Members – Michelle Schultz, Robert Primus
- New DoT Secretary is Buttigieg, former Mayor of South Bend, IN; big interest in urban transit and transformation, Amtrak
- President Trump filled many judicial vacancies, but some Districts (e.g., California) have critical vacancies, and since the election, some Judges have taken senior status, or will resign, so President Biden will have plenty of judicial positions to fill over four years

Legislative Action Already

- Budget Reconciliation Act – Can be passed once in each fiscal year
- Requires complicated process with budget, appropriations that adhere to budget limits
- Generally, provisions that are extraneous to the federal budget are not permitted – the so-called “Byrd Rule”
- If an extraneous provision (e.g., an increase in the federal minimum wage) is objected to, and the objection is upheld, the provision is stricken (“Byrd droppings”)
- Two Budget Reconciliation Acts can be enacted in 2021, one in FY’21, and the other in FY’22, because none was passed in FY’21 before the new Congress was sworn in
- Additional “stimulus” legislation after first Budget Reconciliation Act – “Build Back Better” – is being discussed by President with bipartisan Senators

Budget Reconciliation Act

- Bill is not subject to filibuster, so can pass in Senate will simple majority (51 votes, including VP Harris)
- Both the Senate and the House have passed the same budget, but not yet the Budget Reconciliation Act that would implement spending
- Present price tag is \$1.9 trillion, per President Biden
- No substantial freight rail provisions (but some transit funding)
- May pass by March 14

What Will Come Next?

- After Budget Reconciliation Act is enacted, all legislation (except next Budget Reconciliation Act) will be subject to filibuster, meaning that 60 votes of Senators are needed to permit a bill to be debated on the merits – unless the Senate eliminates the filibuster
- President Biden promoted “unity” in his Inaugural address, but there has been grumbling about the lack of unity so far
- “Unity” legislation – “Build Back Better” with lots of infrastructure spending, up to \$4 trillion in total spending, with \$2 trillion in tax increases; President Biden is a big Amtrak advocate
- Highway Trust Fund has been an inadequate source of revenue for many years, with frozen gas tax and greater fuel efficiency

“Build Back Better” Infrastructure Stimulus Bill

- Municipal transit systems are in deep financial holes due to covid-19
- Amtrak also needed a huge bailout before, will again
- Freight and commuter railroads have finished installing PTC on the relevant portions of their systems, so PTC is not a likely driver of such a bill, but freight railroads will argue that they are important to reducing energy use and greenhouse gas emissions compared to trucks, so may seek federal spending and will seek to block any increase in truck size and weight limitations
- Highways, airports, locks and dams, but also “green energy” (EV charging stations, internet connectivity, mass transit, high-speed rail) and also investments in electricity transmission projects (to harden grid and move wind and solar energy to cities) are likely
- Consensus bills attract other less-related provisions; Congress may approve use of earmarks
- BUT -- where will the funding come from? Gas tax likely going up, but that won't be enough
- Seems unlikely that deficit funding will be a major source of long-term funding for transportation, but perhaps for short-term covid-19-related funding of transit, Amtrak

What Else?

- Other provisions in such a bill are not clear yet, but if history is a guide, freight railroads may seek to alter any policy changes that STB might adopt, whether in an infrastructure bill or elsewhere. See AAR website under “policy” for its perspective on the issues.
- What policy changes are under consideration at the STB?
- Revenue adequacy (EP 766)
- Cost of capital (EP 664)
- Rate reform (EP 665 (Sub-No. 2), EP 722), including Final Offer Rate Reform (either/or) and “revenue adequacy constraint” (adopted but not defined in 1985 when “stand-alone cost” was adopted as the primary rate constraint)
- Rail competition (EP 711 (Sub-No. 1))
- Also, “safe harbor” for fuel surcharges may be back, if DC Circuit decides

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