



Monthly Legislative Report – February 2021

February Advocacy Meeting Summary

Congressman Alan Lowenthal (D-CA) – We have been in contact with Congressman Lowenthal’s senior staff to discuss FY22 appropriations, including request submission procedures, and key deadlines. We also discussed the process for providing Surface Transportation Reauthorization and/or Infrastructure bill input and the role of community project funding in any T&I Committee authorizing legislation. We also discussed funding in the American Rescue Plan for the CIG program and language that would include extra funding for projects with FFGAs and funding allocations prior to 2019.

Congressman Lou Correa (D-CA) – We have been in communication with Congressman Correa’s senior staff to discuss FY22 appropriations, funding requests, priority projects, and the limited return to earmarks. We discussed providing input on the Surface Transportation Reauthorization and the possibility for a larger infrastructure package this summer. We also discussed additional funding for the OC Streetcar in the American Rescue Plan.

Congresswoman Katie Porter (D-CA) – We have been communicating with senior staff in Congresswoman Porter’s office this month to discuss support for language that would provide additional funding for transit in the American Rescue Plan. We also discussed the FY22 appropriations process, request deadlines, and submission procedures.

Congressman Mike Levin (D-CA) – We have been in communication with Congressman Levin’s office regarding the American Rescue Plan and opportunities to include additional funding for transit. We also discussed deadlines for FY22 appropriations requests and the procedures for Community Project Funding (earmarks).

Congresswoman Michelle Steel (R-CA) – We have been in communication with Congresswoman Steel’s senior staff to discuss amendment language for the House Transportation and Infrastructure Committee markup of the American Rescue Plan to include additional funding for CIG projects with FFGAs before FY2019.

Congresswoman Young Kim (R-CA) – We have been in communication with Congresswoman Kim’s senior staff to discuss FY22 appropriations and deadlines for requests. We also discussed her letter with Congressman Correa requesting FEMA’s coordination with the City of Anaheim to establish a vaccination site.

Senator Alex Padilla (D-CA) – We have been in communication with Senator Padilla’s transportation staff to discuss the surface transportation reauthorization bill. We also discussed the cost and time benefits of streamlining specific process and permitting

procedures. Senator Padilla's office has also asked for programmatic input and requests for the upcoming surface transportation reauthorization through their office's web portal.

Congressman Pete Aguilar (D-CA) – We met with Congressman Aguilar and his staff to discuss FY22 appropriations and request procedures. We discussed support for increasing funding for transit and the potential for earmarks.

Congresswoman Norma Torres (D-CA) – We communicated with Congresswoman Torres' office to discuss the Rules Committee meeting to consider the American Rescue Plan and opportunities for members to submit amendments.

House Appropriations: Transportation, Housing and Urban Development – We have been in contact with professional staff in the Majority and Minority regarding FY22 appropriations, and the process for submitting funding and language requests at the committee level. We also discussed new funding for transit in the regular appropriations process.

House Transportation and Infrastructure Committee – We have been in communication with Chairman DeFazio and his senior staff to discuss the upcoming surface transportation authorization process. We discussed conversations between the White House and Committee leaders regarding the outlook for a large infrastructure bill this summer and financing mechanisms being considered. We also discussed the timeline for hearings and a full committee markup of the Highway Bill.

Senate Banking Committee – We continue to communicate with senior staff to discuss possible timeline for a Surface Transportation Reauthorization bill, and the Chairman's priorities.

Community Project Funding (Earmarks)

On Friday night, February 26th, House Appropriations Chairwoman Rosa DeLauro (D-CT) announced that her Committee will be accepting member requests for specific projects in the appropriations bills for the upcoming fiscal year. The Committee has released a Fact Sheet on the reforms and parameters of the new process (available [HERE](#)), and key highlights are included below:

- Earmarks will only be allowed for state or local governmental grantees and eligible non-profits
- Overall earmark spending will be limited to 1 percent of overall discretionary spending, or \$15 billion, or whichever is lower
- Earmarks will be capped at 1 percent of each bill, and each subcommittee will decide and must comply with the full committee cap
- Each member will be allowed a maximum of ten requests across all appropriations bills per fiscal year, and there is no guarantee that they will get any/all of those requests

- The Senate will not have a cap
- The House will only make six programs available for earmarking, which will be the accounts that have historically carried the greatest number of earmarks
- Members will have to provide evidence of a community support and certify that neither they, nor their family members, have a financial interest in the project.
- There will be increased transparency, including an online submission process, public database of all requests, and increased vetting by Subcommittees as well as auditing of a sample of enacted projects conducted by the Government Accountability Office.

According to the House Appropriations Committee staff, the requests will adhere to strict transparency standards, which will require members to post their requests online and verify that they have no personal financial stake, as well as provide evidence of a community support. There will also be a public database of all requests, and increased vetting by subcommittees as well as auditing of a sample of enacted projects conducted by the Government Accountability Office to ensure they comply with Senate Rule 44 and committee standards.

Senate Appropriations Ranking Member Richard Shelby (R-AL) and House Rules Ranking Member Tom Cole (R-OK) have both informally backed a controlled return to a transparent process. However, Minority Leader Mitch McConnell (R-KY) suggested last week that an overwhelming majority of the Republican conference is opposed to earmarking, and they will not plan on submitting requests even as Democrats' plan to reinstate them is becoming increasingly likely.

Additional guidelines are expected to be released in the coming months, including submission deadlines, standardized request process/forms, the accounts and program eligibility, as well as project eligibility requirements. In the interim, the following descriptors will be helpful in defining priorities within the community:

- General project description
- Demonstration of community engagement and need
- Rough estimate of project's total cost
- State or local match
- Identified stakeholders and support within the community

American Rescue Plan & Budget Reconciliation

In the early morning hours of Saturday, February 27th, the House passed the coronavirus relief budget reconciliation bill in a party-line vote of [219-212](#). The only Democrats who joined all Republicans voting "Nay" were Reps. Golden (ME) and Schrader (OR). Earlier that week, the House Budget Committee held a markup of the full relief bill (the *American Rescue Plan Act*; [H.R. 1319](#)) comprised of the various sections drafted by House Committees. Following the markup, Budget Committee Chairman John Yarmuth (D-KY) released a Manager's Amendment (available [here](#)) making changes to the bill. The

manager's amendment was approved and includes sections from the House Foreign Affairs, Science, and Natural Resources Committees to the bill, adding approximately \$11.8 billion in new spending to the measure. While most of the other modifications included in the Manager's package make technical and administrative changes, more substantial changes to the bill include the following:

- Redirects \$1.8 billion reserved for testing and mitigation activities in "congregate settings" to the general testing, tracing, and mitigation fund.
- Provides an additional \$1.2 billion in direct assistance to low-income renters.
- Provides an additional \$425 million to transit agencies for capital investment grants.

The Manager's Amendment makes changes to SEC. 7006 – Federal Transit Administration Grants to strike and replace the original language. The manager's amendment language adds a little over \$400 million in funding for FTA grants and programs.

Most notably, the manager's amendment also includes the following language which will qualify the OC Streetcar for an additional \$9.4 million:

(ii) ALLOCATION.

Of the amounts made available in subparagraph (A)(i), \$175,000,000 shall be provided to each recipient for all projects with existing full funding grant agreements that received an allocation only prior to fiscal year 2019, except that projects open for revenue service are not eligible to receive a grant under this subparagraph and no project may receive more than 40 percent of the amounts provided under this clause. The Administrator of the Federal Transit Administration shall proportionally distribute funds in excess of such percent to recipients for which the percent of funds does not exceed 40 percent. Funds shall be provided proportionally based on the non-capital investment grant share of the amount allocated.

On Thursday, Senate Parliamentarian Elizabeth MacDonough ruled that the minimum wage increase was in violation of the Senate's "Byrd Rule" as its effect on the federal budget is "merely incidental" to the underlying intent of the provision. The ruling came after Senators from both parties met MacDonough to argue their case for whether or not the proposed minimum wage increase qualified for inclusion in the reconciliation package.

Following MacDonough's ruling on Thursday, both Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Budget Committee Chairman Bernie Sanders (D-VT) both indicated they would pursue alternative plans to increase the minimum wage in the reconciliation bill. Chairman Wyden indicated his plan would involve imposing a five percent penalty "on a big corporations' total payroll if any workers earn less than a certain amount," while incentivizing small businesses to raise wages by providing them with an "income tax credit equal to 25 percent of wages, up to \$10,000 per year per employer."

With moderate Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) publicly opposing a \$15 minimum wage, and with a lack of Republican support, the path forward for the minimum wage increase faces an uphill battle in the evenly divided Senate.

The Orange County House Delegation submitted a letter to House Speaker Pelosi (D-CA) and Minority Leader McCarthy (R-CA) on February 10th requesting direct aid to localities regardless of population size. The letter highlighted how no cities within Orange County qualified for CARES Act's 500,000 population threshold for direct aid. The full letter can be found [HERE](#).

INFRA Grant Opportunity

The Department of Transportation opened the application process for the Infrastructure for Rebuilding America (INFRA) grant program this month. Applications are due on Friday, March 19th. The funding for this year's grants totals approximately \$889 million. For the first time, the USDOT seeks INFRA projects that address climate change and environmental justice. Projects will be evaluated on whether they were planned as part of a comprehensive strategy to address climate change, or whether they support strategies to reduce greenhouse gas emissions such as deploying zero-emission-vehicle infrastructure or encouraging modal shift and a reduction in vehicle-miles-traveled. Racial equity will also be considered as a selection criterion, to the extent that project sponsors have completed equity-focused community outreach, and projects are designed to benefit underserved communities. The Department will also consider whether the project is located in a federally designated community development zone, including:

- Qualified Opportunity Zones
- Empowerment Zones
- Promise Zones
- Choice Neighborhoods.

According to information in the grant notice, USDOT seeks projects that apply innovative technology, delivery, or financing methods with proven outcomes to deliver projects in a cost-effective manner. The Department will make awards under the INFRA program to both large and small projects. For a large project, the INFRA grant must be at least \$25 million. For a small project, the grant must be at least \$5 million. Additional resources can be found [HERE](#).

Senate Power Sharing Agreement

After nearly a month of negotiations between Senate Majority Leader Chuck Schumer (D-NY) and Minority Leader Mitch McConnell (R-KY), the full Senate adopted a power sharing resolution (S. Res. 28) outlining the rules and procedures for the evenly split Senate. As anticipated, the final power-sharing agreement is almost identical to the power-sharing agreement made in 2001, the last time there was an even split in the Senate, with Democrats chairing Senate committees with equal party representation amongst committee members. The final agreement also provides for equal committee

budgets, committee staff, and office space between the parties. It also includes procedures where both parties can seek to discharge bills and nominations that deadlock in committee. Additionally, the power-sharing resolution as adopted limits Majority Leader Schumer's ability to "fill the amendment tree," a procedural tool used to prevent the offering of amendments.

Pete Buttigieg Confirmed as DOT Secretary

On February 2nd, Pete Buttigieg was confirmed by the full Senate as Secretary of Transportation by a vote of 86-13. On the same day, the Department of Transportation announced a new list of key staff:

- **Priyal Amin**, Deputy White House Liaison
- **Dalia Batuuka**, Special Assistant for Advance
- **Tristan Brown**, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration
- **Alexis Gonzaludo**, Special Assistant to the Secretary
- **Nick Hornedo**, Digital Communications Manager
- **Chris Meagher**, Deputy Director of Public Affairs
- **Arlando Teller**, Deputy Assistant Secretary for Tribal Affairs
- **Andrew Wishnia**, Deputy Assistant Secretary for Climate Policy

Emergency Order Requiring Face Mask Use in Railroad Operations

On March 1st, the Federal Railroad Administration (FRA) published an emergency order requiring face mask use on all freight and passenger rail operations. The order is pursuant to [Executive Order 13998](#). The FRA has authority under the FRA's safety jurisdiction under the Federal railroad safety laws. [49 U.S.C. 20101](#), 20103. Any violation of this E.O. may subject the person (a railroad carrier) committing the violation to a civil penalty of up to \$118,826 for each day the violation continues. [49 U.S.C. 21301](#) and [86 FR 1751](#) (Jan. 11, 2021). Any individual (railroad personnel) who willfully violates a provision stated in this order is subject to civil penalties under [49 U.S.C. 21301](#). In addition, any individual (railroad personnel) whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under [49 U.S.C. 20111](#). FRA may, through the Attorney General, also seek injunctive relief to enforce this Order. [49 U.S.C. 20112](#). This EO will remain in effect until the CDC modifies or rescinds the national state of emergency. The full order can be found [HERE](#).

High Speed Rail Corridor Development Act of 2021

On February 5th, Rep. Costa (D-CA) introduced [H.R. 867](#) – *High Speed Rail Corridor Development Act of 2021*. The bill would prioritize high speed rail grant applicants that provide a greater non-federal share of cost compared to other project applications. The bill would also set aside half of the authorized funds for projects with less than a 50 percent federal share. The bill would authorize \$8 billion for each year FY22-FY25.

The bill has four Democratic cosponsors and has been referred to the House Transportation and Infrastructure Subcommittee on Railroads.

Passenger Rail Liability Cap Increase

On February 25th, the Department of Transportation released a notice that the Rail Passenger Transportation Liability Cap has been adjusted (raised) from \$294,278,983 to \$322,864,228. More information from the notice is included below:

Docket Number: [DOT-OST-2009-0092](#)

The Department of Transportation is publishing the inflation adjusted index factors for the rail passenger transportation liability cap under [49 U.S.C. 28103](#)(a)(2), as directed by section 11415 of the FAST Act. The index methodology ensures that the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident is based on current dollars and is adjusted for inflation from the \$200,000,000 cap that went into effect on December 2, 1997.

Under the FAST Act, the index is adjusted to the date of enactment of the FAST Act using the Bureau of Labor Statistics Consumer Price Index—All Urban Consumers.

The index was based on the liability cap established on December 2, 1997, and the last full month prior to the enactment of the FAST Act on December 4, 2015. The FAST Act also directs the Secretary to update the liability cap every fifth year after the date of enactment. The table below shows the Index and inflator the Federal Railroad Administration used to calculate an inflation adjusted amount of \$322,864,228.

Month	Index	Inflator	Liability cap
December 1997	161.30	1.00	\$200,000,000
October 2020	260.39	1.61	322,864,228

Passenger Liability Cap Inflation Adjusted Index and Inflation Factor

The adjustment of the rail passenger transportation liability cap to \$322,864,228 shall be effective 30 days after February 22, 2021.

LOCAL Infrastructure Act

On February 25th, Senators Roger Wicker (R-MS) introduced S. 479 – *Lifting Our Communities through Advance Liquidity for Infrastructure Act* ([LOCAL Infrastructure Act](#)). This legislation would repeal the amendments made by Sec. 13532 of OL 115-97, reinstating Advance Refunding Bonds. A brief summary as prepared by the office of Senator Wicker is included below:

- State and local governments issue their debt as municipal bonds to fund education, health care, infrastructure, and other capital improvement projects important to the overall economic well-being of local communities.
- Typically, municipal bonds are federally tax-exempt.
- When interest rates fall, municipalities may seek to refinance their outstanding bonds at a lower rate.
- Advance refunding allows state and local governments the one-time option to refinance outstanding municipal bonds to more favorable borrowing rates or terms. This tool provides state and local governments greater flexibility to generate savings.
- The advance refunding of bonds saved state and local governments billions of dollars over previous decades, which in turn saved money for local taxpayers.
- Since the repeal of advance refunding, there has been a significant drop in the refinancing of municipal bonds even though interest rates continue to trend downward.
- The elimination of advance refunding has imposed substantial financial costs on states and local governments.
- Reinstatement of advance refunding does not require any direct appropriation of federal dollars.

The federal tax-exempt debt could be refinanced only once, but local communities would be able to take advantage of the lower interest rates to generate additional savings on existing bonds. Local governments could reinvest these savings to fund infrastructure, education, health care, or other capital improvement projects. Senator Dianne Feinstein (D-CA) is a cosponsor of the legislation.

Senate EPW Hearing: Building Back Better: Investing in Transportation while Addressing Climate Change, Improving Equity, and Fostering Economic Growth and Innovation

On February 24th, the Senate Environment and Public Works Committee held a hearing on infrastructure and climate change. During his opening statements, Chairman Tom Carper (D-DE) discussed his goal to improve the nation's highways and create new jobs, lift up our communities, build a more sustainable economy, and improve the nation's air quality. Maryland Governor Larry Hogan endorsed permitting and process streamlining as well as a two-year goal for the completion of environmental reviews. Michigan Governor Gretchen Whitmer discussed the need for a federal approach to infrastructure that prioritized equity and climate action. Both Governors supported a bipartisan process for the upcoming surface transportation reauthorization. An ongoing issue of discussion was the long-term effectiveness of the gas tax in regard to the increase in electric vehicles.

Witnesses:

- Governor Gretchen Whitmer of Michigan
- Governor Larry Hogan of Maryland

- Mayor Michael Hancock of Denver, Colorado
- Victoria Sheehan, President of American Association of State Highway and Transportation Officials (AASHTO) and Commissioner of the New Hampshire Department of Transportation.

Note: Unlike in the House, a surface transportation reauthorization bill is covered by multiple committees of jurisdiction in the Senate. The Senate EPW Committee has jurisdiction covering the construction and maintenance of highways, environmental regulations, and bridges. Public Transit and Railroads are covered by the Senate Banking and Senate Commerce Committees respectively, and funding mechanisms (e.g., the federal gas tax) fall under the jurisdiction of the Senate Finance Committee.