

Client Alert

Transition 2021: Top Transportation Policy Issues Facing the Biden Administration

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Transportation policy is a central feature of the incoming Biden administration's "Build Back Better" economic recovery plan, which includes a \$2 trillion infrastructure plan that would reimagine the nation's transportation sector to one that takes advantage of new technology, new energy sources, and new workers. President-Elect Biden announced Pete Buttigieg, the former mayor of South Bend, Indiana and presidential rival, as the nominee to serve as Secretary of Transportation. If confirmed, Buttigieg is expected to play a key role in steering President Biden's infrastructure plan through Congress and ensuring it does not go off the rails (pun intended). To deliver these changes as promised, Congress and the incoming Biden administration will need to tackle a number of tricky policy issues that have bedeviled previous reform efforts.

Fate of the Gas Tax

Funding for the federal highway and transportation programs largely comes from the Highway Trust Fund, which is financed through taxes on motor fuels. That tax has not been increased since 1993, resulting in funding shortfalls for more than a decade, which Congress has made up through appropriations from the general treasury fund. That shortfall is expected to increase sharply under Biden's transportation plan, and the incoming administration will need to grapple with how to bridge the gap.

In particular, the Biden campaign committed to transform the American economy to net-zero emissions by 2050, with the power sector becoming carbon-free by 2035. The backbone of the new electric-based transportation sector will be 500,000 vehicle charging stations. The campaign also set a goal that all new American-built buses be zero-emissions by 2030 and that all 500,000 school buses in the U.S. be converted to zero-emissions.

While the growth of electric vehicles has contributed to some decrease in receipts to the Highway Trust Fund in recent years, the expected Biden administration push to decarbonize the transportation sector poses an existential challenge to the Highway Trust Fund's long-term viability as a source of funding for highway projects. The incoming Biden administration has messaged potential increased taxes on the oil and gas sectors, and an extension of tax credits for electric vehicles, but it has not signaled support as yet for an alternative to the Highway Trust Fund's reliance on motor fuel taxes. During the campaign, Buttigieg said he supported moving away from relying on the federal motor fuel taxes – because he supported moving away from fossil fuels – and suggested he would support a user fee based on miles traveled as an alternative.

Open Road for Autonomous Vehicle Standards

The Trump Administration has taken a relatively hands-off approach toward regulating the development and deployment of autonomous vehicle technologies, favoring a technology-neutral policy, improved coordination between the government and industry, and securing America's position as a world leader in technological innovation. For example, the Department of Transportation and the White House Office of Science and Technology Policy have released a series of frameworks to guide the federal government's involvement in regulating the future of transportation as autonomous vehicle technology becomes more ubiquitous. The most recent framework, released in January 2020, highlighted the roles different federal agencies and programs already play in supporting the development of autonomous vehicle technology and how manufacturers benefit from the experience various agencies have on matters of consumer privacy, data protection, and passenger safety.

On December 3, 2020, the National Highway Traffic Safety Administration published an [Advanced Notice of Proposed Rulemaking](#) that seeks public comment and information on the development of a safety framework for use in regulating automated driving systems. The ANPR questions whether it would be premature to establish new Federal Motor Vehicle Safety standards given the ongoing technological innovation that is racing through the automotive industry.

The ANPR public comment period closes February 1, 2021 – a little more than one week into the new Biden administration. It will be up to the Biden administration to evaluate the feedback from the ANPR (or pull it back) and to determine whether and how autonomous vehicle technology should be regulated. A prescriptive set of standards may boost public safety in the short term, but the Biden team will have to measure any short-term impact against the long-term trajectory the industry may experience from leading technological innovation.

Then there's the Biden campaign promise to create one million new jobs in the American auto industry. Pulling this off, and legislating and regulating without impeding job growth, will be a core administration focus and challenge.

Aviation Policy Up in the Air

While the incoming Biden administration has not announced a comprehensive aviation policy, the COVID-19 pandemic is expected to remain a major concern for all players in the aviation industry. The new administration's approach to COVID-19, if effective, may open the doors for an increase in recreational travel, and a welcome boon for commercial airlines. Along similar lines, there is some expectation that the new administration may embrace an "open" policy in terms of immigration, trade, and tourism policies and open skies treaties, which could have the effect of increasing travel to and from the United States.

Biden's infrastructure plan touts doubling funding for the Federal Aviation Administration's Airport Improvement Program, which provides grants to public airport agencies and, in some cases, to private owners and entities for the planning and development of certain public use airports. During the campaign, then-candidate Biden said he would support increasing the federal limit for the Passenger Facility Charge, the use fee

that airports use to repair facilities and to increase passenger experience, which has been capped at \$4.50 for decades. Realization on both of these points would boost airports and could provide an influx of funding at a time when many airports are attempting to build out facilities to promote new entrant technologies such as advanced air mobility projects.

The most significant impact to the drone industry will likely be the new administration's approach to U.S.-China relations. If the new administration is friendlier toward China than the current administration, there may be some walk-back of the recent flurry of executive agency rules and policies limiting government use of Chinese drones.

The drone market may also be impacted by the new administration's environmental agenda. For example, a significant component of the drone market today is aerial inspections of pipelines, refineries, and offshore drilling facilities. Reduction in that family of infrastructure could affect inspections in that sector. On the other hand, the drone industry is also heavily involved in aerial inspections of alternative energy sources such as wind turbines. An increase in alternative energy infrastructure would aid industry players who specialize here and could entice new entrants who may pivot to meet a growing need.

Mass Transit in the Time of Coronavirus

As with aviation, the COVID-19 pandemic continues to challenge rail and mass transit systems as many workers continue to avoid travel and work remotely.

President-elect Biden has for decades been a regular traveler on Amtrak between his home in Wilmington, DE, and Washington, D.C., and has spoken of a second great railroad revolution during his administration. The train and mass transit sectors would ordinarily be expected to undergo significant transformation away from carbon-based fuels as part of the Biden administration's infrastructure plan. Indeed, per its goal of net-zero emissions, the Biden campaign committed to provide every American city of more than 100,000 residents with zero-emission transportation options, including light rail.

The Biden campaign also promoted rail as a way to bridge smaller communities across the country with more urban, metropolitan areas, enabling increased mobility of workers and more efficient shipping of freight and goods. Whether the coronavirus will lead to any long-term changes to mass transit and rail transportation investment and reform plans remains to be seen, and is among the questions the new Biden administration will need to face.

These are energizing times for transportation, with innovation rampant and players poised for growth and opportunity. Eyes will be on the Biden Administration as it decides whether to play accelerator, inhibitor, or some combination across transportation sectors. Stay tuned to these pages as events unfold.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Rebecca Baden Chaney

Partner – Washington, D.C.

Phone: +1.202.624.2772

Email: rchaney@crowell.com

Scott L. Winkelman

Partner – Washington, D.C.

Phone: +1.202.624.2972

Email: swinkelman@crowell.com

Byron R. Brown

Senior Counsel – Washington, D.C.

Phone: +1.202.624.2546

Email: bbrown@crowell.com

Mary-Caitlin Ray

Counsel – Washington, D.C.

Phone: +1.202.688.3524

Email: mray@crowell.com