The View from Washington, D.C.

(June 7, 2021)

The Infrastructure Debate Continues to Dominate

Summer is here. COVID restrictions have been lifted all across the United States. And now, after 15 months of being cooped up inside our homes as the result of the deadly coronavirus, Americans are raring to go and ready to get *outside* and enjoy our nation's natural treasures.

Meanwhile, back in Washington, D.C., the operations of government continue to grind on as Democratic majorities in the Senate and House and the Biden Administration consider the best path forward for enacting a far-reaching infrastructure package. To Democrats, infrastructure includes funding for what most regard as traditional "infrastructure" (e.g., construction of roads, bridges, airports, rail, broadband) as well as funding for "human infrastructure" (e.g., assistance for families, students, the elderly).

Republicans also support traditional infrastructure spending, but express more wariness (and opposition) to a more expansive definition of "infrastructure."

This ongoing debate on the scope of an infrastructure package – and how to pay for it – will continue to dominate the nation's capital for the better part of June and July, and possibly drag into the fall.

And it carries significant implications for recreation in general and RV park and campground owners more specifically.

Without question, upgrading the nation's highways, roads and bridges will help the traveling public get to where they want to go -- for years to come. There seems to be broad bipartisan support in Congress for that.

But the disagreement between the parties centers on how to pay for it:

- Democrats, among other things, want to increase the corporate income tax rate from 21 to 28 percent, increase the top marginal rate on the wealthiest taxpayers, and eliminate the long-standing step-up in basis for unrealized capital gains.

- Republicans are adamantly opposed to increasing taxes, which were generally reduced in the Tax Cuts and Jobs Act signed in to law by President Trump in 2017. Instead, Republicans want to use unspent COVID relief funds and user fees to pay for any new infrastructure spending. Senate Minority Leader Mitch McConnell (R-KY) has said that he does not believe even one Senate Republican would support tax increases.

In a Senate that is evenly divided – 50 Democrats, and 50 Republicans (with Vice President Harris casting a tie-breaking vote, if necessary) – the Democratic Majority cannot afford to lose any votes. It can try to pass legislation through "regular order," which would mean that 10 Republicans would have to join all 50 Democrats to overcome a potential filibuster (60 votes are needed overcome a filibuster) to move a bill forward.

Alternatively, Democrats could try to pass an infrastructure package through the "budget reconciliation" process, were they would only need 50 votes to pass legislation, but be limited in what they could include in such a bill by arcane budget rules.

The problem is, not all Democrats want to use the budget reconciliation process and actually may oppose using it because they regard it as politically explosive and partisan. Sen. Joe Manchin (D-WV), for example, is the most notable Democrat to oppose using budget reconciliation – although it is not inconceivable that he could change his mind at some point. Today, he says he just wants the parties to work together. And remember, to use the budget reconciliation process, Democrats would need the support of <u>all</u> 50 Democratic Senators.

All of this is a long way of saying that there is no guarantee that an infrastructure package becomes law, even though Members on both sides of the aisle support additional funding for road, bridges, airports, etc. Most observers in Washington expect the Democrats in Congress to choose the budget reconciliation path outlined above, which, if successful, would enable them to raise the corporate rate, the top individual rate, and a host of other tax-law changes. This picture will become clearer by the end of June.

<u>Taxing Capital Gains and Limiting Step-Up Basis</u>

One proposed tax-law change that could be important to RV park and campground owners (and other small businesses) is gaining increased attention (if not support) in Washington: the elimination of step-up basis on unrealized capital gains upon death. Today, when an appreciated asset is held by a decedent at death, the basis of the asset for the decedent's heir is adjusted (usually "stepped up") to the fair market value of the asset at the date of the decedent's death. As a result, the amount of appreciation accruing during the decedent's life on assets that are still held by the decedent at death avoids federal income tax.

The Biden Administration, in its Revenue Proposals for Fiscal Year 2022 (which begins October 1, 2021) that were released on May 28, would change these rules. Under the Administration's proposal, for a decedent, the amount of gain would be the excess of the asset's fair market value on the decedent's date of death over the decedent's basis in that asset. That gain would be taxable income to the decedent on the Federal gift or estate tax return or on a separate capital gains return.

Certain exclusions would apply to this new rule. For example, transfers by a decedent to a U.S. spouse or a charity would carry over the basis of the decedent. The proposal also would allow a $1 million per-person exclusion from recognition of other unrealized capital gains on property transferred by gift or held at death.

This proposal is similar in concept to "discussion draft" – the "Sensible Taxation and Equity Promotion (STEP) Act" – unveiled by Sen. Chris Van Hollen (D-MD) in March. Sen. Van Hollen has not introduced his bill yet. Over in the House, Rep. Bill Pascrell (D-NJ) did introduce very similar legislation, H.R. 2286.

If Democrats do choose to use the budget reconciliation process outlined above, there is a very real chance that elimination of step-up basis is included in that legislation. Republicans are very unlikely to support it.

Prospects for Other Key Legislation

A. **Recreation Not Red Tape Act (RNRT Act)**

On May 27, Sen. Ron Wyden (D-OR) and Rep. Blake Moore (R-UT) introduced the bipartisan "Recreation Not Red-Tape Act" (S. 1874/H.R. 3527) in their respective chambers. The legislation, which is non-controversial, has a real chance at passage this year for two reasons: 1) it is bipartisan and 2) Sen. Wyden, who chairs the powerful Senate Finance Committee, also is the second-ranking Democrat on the Senate Energy and Natural Resources Committee.

In general, the bill would remove barriers to outdoor recreation, making it easier to enjoy public lands and boosting rural economies across the country. For example, it would require the Forest Service and Bureau of Land Management to review their permitting processes for guides and recreation enthusiasts and improve efficiency, encourage military branches to inform service members and veterans of outdoor recreation opportunities, hold agencies accountable for prioritizing outdoor recreation and increase volunteerism to address the maintenance backlog of America's public lands.

The RNR Act also includes the "Simplifying Outdoor Access for Recreation (SOAR) Act," introduced by Sens. Martin Heinrich, D-N.M, and Shelley Moore Capito, R-W.Va., which would improve outdoor recreation permitting processes.

In the House, the Recreation Not Red-Tape Act is currently co-sponsored by Reps. Derek Kilmer (D-WA), Debbie Dingell (D-MI), and Don Young (R-AK). ARVC is closely monitoring the progress of this legislation, and who chooses to co-sponsor it.

B. **Implementation of Great America Outdoors Act (GAOA)**

The Great America Outdoors Act established the National Parks and Public Land Legacy Restoration Fund (LRF) and authorized up to $1.9 billion per year through Fiscal Year 2025 to reduce deferred maintenance on public lands and at Indian schools. GAOA also provided permanent, full funding of the Land and Water Conservation Fund (LWCF) at $900 million annually to secure public access and improve recreational opportunities on public lands, protect watersheds and wildlife, and preserve ecosystem benefits for local communities.

This landmark conservation legislation, signed into law by President Trump in August 2020, will use revenues from energy development to provide up to $1.9 billion a year for five years in the National Parks and Public Land Legacy Restoration Fund to provide needed maintenance for critical facilities and infrastructure in our national parks, forests, wildlife refuges, recreation areas and American Indian schools. It will also use royalties from offshore oil and natural gas to permanently fund the Land and Water Conservation Fund at $900 million a year to invest in conservation and recreation across the country.

ARVC is now monitoring the implementation of this important new law.

C. INVEST in America Act

On June 9, the House Transportation and Infrastructure Committee will mark up its surface transportation reauthorization legislation (the "INVEST in America Act"). The INVEST in America Act is the House Committee on Transportation and Infrastructure's five-year, $547 billion surface transportation reauthorization bill that will create good-paying jobs to rebuild and re-imagine America's surface transportation infrastructure.

Among other things, this legislation would deliver better roads and bridges faster by increasing investment by 54 percent, with an emphasis on fixing existing infrastructure. It also dedicates $32 billion for bridge funding to ensure bridges in communities of all sizes are safer, more reliable, and more resilient. It also would make our roads safer with a significant boost to roadway safety programs, record levels of investment in walking and cycling infrastructure, complete streets planning and smarter road design.

ARVC will be monitoring how this legislation progresses in the House.