Bipartisan compromise appears elusive as Republicans unveil infrastructure counteroffer

Senate Republicans rolled out a counterproposal to President Biden's infrastructure investment plan this week that seeks to narrow the scope and cost of the package. But while the president and some key lawmakers have said they would prefer bipartisan legislation to a majority-only bill passed using the budget reconciliation process, that goal appears elusive as the two parties remain at odds over some significant issues and many Democrats are unwilling to let negotiations linger without tangible signs of progress.

With $568 billion in proposed spending, the GOP framework released April 22 – dubbed "the Republican Roadmap" – is smaller than the $600 billion to $800 billion that some Republicans had hinted at in the past two weeks and amounts to about a quarter of total spending in the American Jobs Plan President Biden unveiled in late March.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210423_1_suppA.pdf

'Sticking to actual infrastructure'

Senate Environment and Public Works Committee ranking member Shelly Moore Capito, R-W.Va., who led the rollout, said she and her Republican colleagues believe the package should "not be so large as to fail to launch, which means sticking to actual infrastructure." The document defines infrastructure as roads and bridges, public transit systems, rail, drinking water and wastewater infrastructure, ports and inland waterways, airports, safety, broadband infrastructure, and water storage.

A GOP criticism of the White House plan has been its call for investment in areas outside the traditional infrastructure space, including in home health care and elder care, schools, daycare centers, and fighting climate change. The Republicans' framework calls for more investment in roads, bridges, and airports than President Biden's proposal but for less spending on other elements that both parties agree fall under the broad umbrella of "infrastructure."

"It serves as a realistic, thoughtful approach that addresses the core areas of infrastructure that we all agree upon," Capito said.

Sens. Roger Wicker of Mississippi (ranking member of the Commerce, Science, and Transportation Commerce), Pat Toomey of Pennsylvania (ranking member of the Banking, Housing, and Urban Affairs Committee), and John Barrasso of Wyoming (ranking member of the Energy and Natural Resources Committee and chairman of the Senate Republican Conference) joined Capito in introducing the framework.

The trouble with pay-fors

Crucially, while the White House proposal was accompanied by significant pay-fors in the Made in America Tax Plan, Republicans rejected the primary Democratic ideas for raising offsetting revenue – namely, tax increases on corporations – and outlined alternatives that are generally unacceptable to many Democrats or insufficient to raise revenue at the levels Democrats and the White House feel are necessary to meet various spending goals. The newly released document states that infrastructure legislation should avoid increasing the federal debt, shore up dedicated revenue sources such as trust funds (which are funded mostly by fuel taxes), ensure electric vehicle users are contributing revenue to cover the cost of highway construction and maintenance, and repurpose unused federal spending. It also calls for "preserv[ing] the Tax Cuts and Jobs Act" by "protecting against any corporate or international tax increases" and ensuring that the current cap on the deduction allowed for individuals' state and local tax (SALT) payments stays in place beyond its scheduled expiration at the end of 2025.

While a variety of stakeholders have advocated raising the federal excise taxes on gasoline and diesel, which have not been increased since 1993 and are not indexed to inflation, there has not been enough support for doing so from either party. As a result, the Highway Trust Fund has relied on transfers from the General Fund to remain solvent in recent years. The president reportedly told lawmakers during an April 12 White House meeting that he was open to raising the gas tax by 5 cents to pay for his infrastructure bill, but White House Press Secretary Jen Psaki later said he mentioned it "only to make a point that even a significant increase in the gas tax, which some people have proposed, would pay only for a fraction of the investment the country needs" and added that it is not being considered for this legislation.

Sen. Joe Manchin, D-W.Va., a crucial vote for Democrats, who don't have a single vote to spare in the evenly divided Senate, has also rejected an increase in fuel taxes or user fees.

"Hell no, don't raise them!" Manchin told the *Huffington Post* on April 21. "I've got people that have to drive a long way to make a living. That just makes it harder on the working person. That's not the way to go."

As electric vehicles (EVs) grow in popularity, there is also an argument that fuel taxes at any rate will be a declining revenue source and that EV owners should begin to pay for their use of public infrastructure. Although this argument has some bipartisan support, lawmakers have yet to settle on a specific approach, such as a vehicle-miles-traveled (VMT) fee.

"[E]lectric vehicles are free riders, right now, they don't pay the gas tax," said Sen. Susan Collins, R-Maine, during an online *Punchbowl News* event April 20. "So one issue is for electric vehicles, should there be some sort of assessment or miles traveled tax or something so that they are helping to pay for the roads and bridges that these vehicles travel on."

Secretary of Transportation Pete Buttigieg made headlines last month when he endorsed a VMT to fund the American Jobs Plan, but he later walked back his comments, saying that a VMT and an increase in the gas tax were "not part of the conversation about this infrastructure bill."

Prospects for compromise

Initial reactions to the GOP's counteroffer from some Senate Democrats suggest that the path to a compromise likely would be a rocky one. Finance Committee Chair Ron Wyden, D-Ore., called the Republican plan "far too small" and said it "paves over the status quo."

"The contrast [with the American Jobs Plan] could not be more stark," he said.

Finance Committee member Bob Casey, D-Pa., said the plan "fails to meet the moment we're in," adding that it was "not a proposal I could support."

And Budget Committee Chairman Bernie Sanders, I-Vt., stated that the proposal "goes nowhere near what has to be done to rebuild our crumbling infrastructure and the funding is totally regressive and anti-working class."

Oversalted?: In addition to disparities in scope, cost, and pay-fors between the president's plan and the GOP's counteroffer, one particular issue that could prove to be nettlesome in any potential bipartisan, bicameral negotiations is the apparent insistence in the GOP framework on retaining the $10,000 cap on the SALT deduction.

A sizeable contingent of House Democrats from high-tax states such as California, New Jersey, and New York have demanded that the cap be repealed in the infrastructure bill. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 20, Apr. 16, 2021.) Most recently, 41 House Democrats from California – all except Speaker Nancy Pelosi – sent a letter to President Biden on April 15 urging him to restore full deductibility of SALT in his infrastructure package. (The president thus far has not taken a position on the SALT deduction cap, although White House officials have said the administration would consider proposals to repeal it if proponents offered acceptable revenue offsets.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210416_1.html
URL: https://mikelevin.house.gov/imo/media/doc/2021-04-16%20CA%20Delegation%20SALT%20Cap%20Letter.pdf

A handful of House Republicans also advocate relief from the cap, but generally the GOP – led by House Ways and Means Committee ranking member Kevin Brady of Texas – has argued that repeal would be an "incredibly tone deaf" tax break for the wealthy that is contrary to Democrats' purported focus on middle-class families. For this reason, the issue is also a polarizing one within the Democratic caucus, with the party's progressives in particular saying repeal would mostly benefit high-income households. (Debate over who benefits from the SALT deduction also arose this week during a Senate Finance Committee hearing on "racial, ethnic, and gender disparities in the tax code." See separate coverage in this issue for details.)

In the House, Pelosi can lose only a very small number of Democratic votes to pass legislation without Republican support – that number currently is three but is expected to grow slightly as special elections are held to fill some vacant seats – so keeping her members in the fold is essential. At least one Democrat – Rep. Tom Suozzi of New York – has said the issue is an absolute red line for him.

"The bottom line is: No SALT [repeal], no deal," Suozzi said earlier this month.

A path forward?: All these concerns aside, Sen. Chris Coons, D-Del., who is a confidante of President Biden, said he was "encouraged" by the GOP proposal.

"It strikes me as a serious attempt at providing a counteroffer that meets the general framework that I was hoping for," he told reporters April 22.

Coons has suggested that a path forward for infrastructure legislation may require a smaller bipartisan bill addressing traditional infrastructure, followed by a bill that includes additional Democratic priorities that could pass without any Republican support through the process of budget reconciliation. (Reconciliation allows for legislation to clear the Senate with just 51 votes, rather than the usual 60 needed to overcome a filibuster in that chamber. But following that path would require all 50 Senate Democrats to remain united so that Vice President Kamala Harris could step in to break a tie with Republicans. Reconciliation also comes with some constraints on what can be included and a statutory requirement that the legislation not increase the deficit in any fiscal year beyond the budget window.)

It is not clear at this point, though, that all Democrats will be willing to let the Republicans take joint credit for spending on infrastructure projects that are likely to be popular with constituents – without painful revenue offsets – and then be forced to negotiate within their own caucus over a second, larger bill that will be denounced by the GOP.

For her part, Jen Psaki said at a White House press briefing April 22 that the GOP proposal was a starting point for discussions, but she did not comment on the details. She said the president plans to meet with Republicans the week of April 26.

"We certainly welcome any good faith effort," she said. "We certainly see this as that, but there are a lot of details to discuss."

The meter's running: A handful of Democrats have been meeting regularly with Republicans in recent weeks to try and work towards a feasible compromise, and there is recognition among many Senate Democrats that some attempt at bipartisan negotiation is necessary – if for no other reason than that Manchin insists upon it. But they have made clear that they do not want talks to continue for long if there are no clear signs that a compromise is truly possible.

"At some point, if you just see that there's no real effort to kind of bridge a reasonable bipartisan agreement, you've got to go. Because that's what people are counting on," said Finance Chairman Wyden earlier this week. "You reach that point, when if you wait any longer, people get hurt."

The House appears likely to begin the process using so-called regular order, marking up legislation in the Transportation and Infrastructure Committee that will reauthorize surface transportation funding due to expire September 30 and could potentially be used as a starting point for additional infrastructure spending.

“We have to do an authorization no matter what by October 1,” said committee chair Peter DeFazio, D-Ore., this week.

Speaker Nancy Pelosi has said she would like to move an infrastructure bill through the House by July 4, but it is unclear if that timeline is realistic given the extensive negotiations, legislative drafting, and revenue scoring that would have to precede any floor action.

Biden’s ‘American Families Plan’ still to come

President Biden is also expected during the week of April 26 to outline what he is calling the American Families Plan, which will include measures Democrats have dubbed “human infrastructure” or “social infrastructure,” such as expanded educational opportunities, expanded child care subsidies, and a national paid-leave program.

The offsets for this additional spending – previewed as about $1.5 trillion – are anticipated to be higher taxes on upper-income taxpayers, including an increase in the top marginal income tax rate, higher capital gains taxes, and changes to estate and gift tax rules. The president has maintained since his campaign that he will not raise taxes on those earning less than $400,000 a year, but it continues to be unclear whether this applies to individuals or households.

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