

## As infrastructure talks between Biden and Capito break down, bipartisan Senate group tries to fill void

After weeks of negotiations, President Biden and GOP Sen. Shelley Moore Capito of West Virginia this week ended their talks around a potential infrastructure package, citing large and persistent differences of opinion on the size of any plan and its financing; meanwhile, a bipartisan group of senators redoubled their efforts to craft a plan that they hope will attract support from lawmakers on both sides of the aisle.

### Wide gulf

The negotiations between President Biden and Sen. Capito, the ranking Republican on the Senate Environment and Public Works Committee, officially broke down on June 8. Capito had been leading the negotiations with the White House on behalf of a group of other GOP senators who serve as the top Republicans on relevant committees, including Senate Finance Committee ranking member Mike Crapo of Idaho and Senate Energy and Natural Resources Committee ranking member John Barrasso of Wyoming. Barrasso is also a member of Senate Republican leadership.

Despite several face-to-face meetings between the president and Sen. Capito and back-and-forth exchanges of offers and counteroffers, however, familiar sticking points around spending levels and taxes ultimately caused the negotiations to run aground.

According to reports, President Biden during a private meeting on June 2 had offered to reduce the size of the spending component of his plan – to about \$1 trillion above so-called “baseline” infrastructure spending, or spending under an assumption that current-law levels are continued into the future – and to drop his proposal to raise the corporate tax rate to 28 percent as a budget offset.

Instead, reports suggested Biden offered to lean more heavily on another financing component of his original infrastructure proposal – that is, a 15 percent minimum tax on the book income of certain large corporations. (For details on Biden’s American Jobs Plan, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.) White House Press Secretary Jen Psaki emphasized in a June 3 press briefing, however, that the president’s concession in “this specific negotiation” is “absolutely not” a signal that he has abandoned efforts to increase the corporate tax rate.

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409_1.html)

But the administration’s offer was not enough to move Sen. Capito who, along with her GOP colleagues, has remained opposed to any kind of income tax increases as part of the current infrastructure talks.

“I spoke with the president this afternoon, and he ended our infrastructure negotiations,” Capito said in a statement released June 8. “Despite the progress we made in our negotiations, the president continued to respond with offers that included tax increases as his pay-for, instead of several practical options that would have not been harmful to individuals, families, and small businesses.”

**URL:** <https://www.capito.senate.gov/news/press-releases/capito-statement-on-president-biden-ending-infrastructure-negotiations-with-republicans>

Sen. Capito's latest offer, by contrast, would have leaned on infrastructure-related user fees and repurposing already-approved coronavirus-relief funds in order to boost infrastructure spending on the order of about \$300 billion above baseline – a level that Biden termed a “disappointment.”

### **Bipartisan Senate group steps in**

As President Biden's talks with Sen. Capito receded, focus shifted to a separate, bipartisan group of senators who have also been holding casual discussions around infrastructure in recent weeks. That group is generally comprised of more rank-and-file members whose votes likely would be critical to garnering the three-fifths majority needed to advance any package through the 50-50 Senate under regular order, such as Democratic Sens. Joe Manchin of West Virginia, Kyrsten Sinema of Arizona, and Mark Warner of Virginia, and Republicans Mitt Romney of Utah, Rob Portman of Ohio, and Bill Cassidy of Louisiana.

The group announced in a brief statement released June 10 that it had agreed on a “compromise framework” that “would be fully paid for and not include tax increases,” but provided no additional details.

The initial response from the White House to the news of the framework was noncommittal. An administration spokesperson commented June 10 that “[t]he president appreciates the senators’ work to advance critical investments we need to create good jobs, prepare for our clean energy future, and compete in the global economy,” but cautioned that “[q]uestions need to be addressed, particularly around the details of both policy and pay-fors, among other matters.”

It is also unclear whether this framework can attract broad support in the Senate. Republicans outside of the group have offered little in the way of public comments thus far. Moreover, there appears to be a real risk that more progressive Democrats not within this negotiating group may balk at any bipartisan deal that does not meet their standards, especially as to the plan's size.

“There aren't 10 Republicans who are even willing to talk to us about compromise,” Sen. Sherrod Brown, D-Ohio, said earlier this week. “And if they get exactly 10 Republicans, you'd probably lose some Democrats if it's too squish, middle-of-the-road, stand-for-nothing minimalist.”

### **Senate Democrats prepare for budget reconciliation**

While the White House and congressional leaders appear to be giving bipartisan talks in Congress a chance to proceed, Senate Majority Leader Charles Schumer, D-N.Y., also made clear this week that congressional Democrats are eyeing the budget reconciliation process as a way to side-step a likely GOP filibuster against some or all of Democrats' infrastructure ambitions.

By utilizing reconciliation – which first requires the House and Senate to adopt a congressional budget resolution authorizing the process – Democrats could advance subsequent budget-related legislation with the

support of all 50 Senate Democrats and the tie-breaking vote of Vice President Kamala Harris. This was the procedure Democrats employed to enact the COVID-relief focused American Rescue Plan earlier this year.

“It may well be that part of the bill that’ll pass will be bipartisan, and part of it will be through reconciliation,” Schumer said June 8. “[W]e’re not going to sacrifice the bigness and boldness in this bill.”

For his part, Senate Budget Committee Chairman Bernie Sanders, I-Vt., suggested his panel could start the process moving on a budget resolution for fiscal year 2022 in the coming weeks.

“I don’t know if you can do it in June,” Sanders said June 8. “[M]aybe in July.”

Although there had been some discussion among Sen. Sanders and Democratic leaders about the possibility of leveraging a rarely used provision within the Congressional Budget Act of 1974 to revise the fiscal year 2021 budget resolution and reconciliation instructions that Democrats used to move the American Rescue Plan – potentially opening an easier path to more than one round of reconciliation legislation this year – a ruling from the Senate parliamentarian that began circulating on Capitol Hill last week made clear that this avenue may not be available for a variety of reasons, including the absence of any significant, unforeseen change in the economy since that fiscal 2021 budget was adopted earlier this year.

Sanders also expressed his doubts about the ongoing bipartisan negotiations and suggested that the budget resolution that he intends to move – and the reconciliation instructions he intends to include – would be geared toward accommodating elements of both President Biden’s American Jobs Plan as well as his American Families Plan. (For prior coverage of the American Families Plan, see *Tax News & Views*, Vol. 22, No. 23, Apr. 30, 2021.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210430\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210430_1.html)

“We’re working on it right now,” Sanders said.

It is important to keep in mind, however, that in order to tee up the reconciliation process, Sen. Sanders and Democratic leaders would also have to secure the support of moderate Democrats – including Sens. Manchin and Sinema – on the underlying budget resolution. Those two senators in particular have been vocal about their reticence on adopting procedural tactics to bypass Republicans in lieu of pursuing legislation on a bipartisan basis.

In related developments this week, Democrats on the House Transportation and Infrastructure Committee on June 10 advanced – on a largely partisan basis – a \$547 billion, five-year reauthorization of highway and mass transit programs (H.R. 3684, the INVEST in America Act) which are otherwise scheduled to lapse after September 30. House Majority Leader Steny Hoyer, D-Md., indicated that the measure will come up for a vote on the House floor during the week of June 28. Although the measure’s path forward over the long term remains unclear, it could serve as a base upon which Democrats attempt to build a broader infrastructure spending package molded after President Biden’s prior proposals.

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