

Senate Democrats eye \$3.5 trillion budget reconciliation package, bipartisan talks on ‘hard’ infrastructure continue

Democrats on the Senate Budget Committee announced this week they had agreed on the broad contours of a fiscal year 2022 budget resolution with reconciliation instructions designed to unlock a \$3.5 trillion “human infrastructure” package that could move later this year with only Democratic support. Meanwhile, a bipartisan group of senators negotiating a roughly \$1.2 trillion physical infrastructure bill continued their quest to convert their recently announced “framework” into legislative language.

High-level budget deal...

The \$3.5 trillion accord among Budget Committee Democrats was announced on July 13 by Senate Majority Leader Charles Schumer, D-N.Y., and Senate Budget Committee Chairman Bernie Sanders, I-Vt.

Chairman Sanders late last month was reported to be eyeing a budget blueprint with reconciliation instructions large enough to accommodate a \$6 trillion package – an ambition that was scaled back to win the support of more moderate Budget Committee Democrats, including Sen. Mark Warner of Virginia, who also sits on the taxwriting Senate Finance Committee.

“In some cases [the agreement] doesn’t provide all the funding that I would like to do right now,” Sanders said July 14. “But given the fact that we have 50 members, and that compromises need to be made, I think this is very, very significant.”

That earlier \$6 trillion framework Sanders had been considering reportedly also would have allowed space for relaxing the \$10,000 cap on state and local tax (SALT) deductions put in place by the 2017 Tax Cuts and Jobs Act (TCJA, P.L. 115-97) to the tune of about \$120 billion. Whether a comparatively smaller \$3.5 trillion package could also accommodate such a policy – which is of paramount importance to a number of Democrats hailing from New York, New Jersey, and other “blue” states with higher income and property taxes – remains to be seen. (Lawmakers interested in SALT cap relief believe there will be space in the \$3.5 trillion resolution to accommodate some language addressing the SALT deduction, but the size and scope of any relief are likely to be subject to negotiations depending on how much of the available spending cap policymakers are willing to devote to this.)

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 through the Senate with the support of all 50 Senate Democrats plus the tie-breaking vote of Vice President Kamala Harris rather than the three-fifths supermajority typically required to overcome procedural hurdles in the chamber. This was the procedure Democrats employed to enact the American Rescue Plan (P.L. 117-2), the COVID-relief legislation that was signed into law earlier this year. But even though the process allows the majority to bypass the possibility of a filibuster by the minority party, it also comes with procedural strings which may materially impact the provisions Democrats can pass.

But many details TBD...

This high-level deal among committee Democrats should, at this point at least, likely be viewed as a first step on what may be a long and challenging road to ultimate enactment of any human infrastructure package.

First, it is important to note that, as of press time, the actual legislative text of the fiscal 2022 budget resolution had not been released and a timeline for a committee mark-up and consideration on the Senate floor was not clear (though Majority Leader Schumer has indicated that he would like the Senate to take up both the budget plan and the bipartisan physical infrastructure package – more on that below – before the chamber adjourns for its traditional August recess and may take it directly to the full Senate for a vote, bypassing a mark-up and approval at the Budget Committee).

Also unclear is exactly how the reconciliation instructions designed to tee-up a \$3.5 trillion fiscal plan would be structured. Some budget observers have speculated that – similar to the fiscal year 2021 budget resolution adopted in February that paved the way for congressional Democrats to send the roughly \$1.9 trillion American Rescue Plan to President Biden’s desk – any reconciliation instructions utilized to move another reconciliation bill later this year may be structured as so-called “deficit-increase” instructions that would allow for filibuster-proof passage of a legislative package that, on net, increases the deficit by not more than, in this case, \$3.5 trillion over the 10-year budget window.

Deficit-increase instructions would not preclude Democrats from paying for some or all of their spending priorities with tax increases and other budgetary changes, but would give them a certain amount of flexibility in how they structure a reconciliation package – flexibility they may need in striking a balance between the concerns and priorities of moderates and progressives within their caucus – that so-called “budget-neutral” instructions may not. (Virginia Democratic Sen. Mark Warner stated this week that the \$3.5 trillion would be fully paid for, suggesting that this amount is a gross number but that lawmakers are eyeing a net cost of zero.)

Finally, budget resolutions, by definition, cannot stipulate specific tax and spending policies to be reported by authorizing committees to meet the fiscal goals of the budget’s reconciliation instructions; rather, they provide dollar targets for deficit increases and decreases for each panel.

Though reports indicate that Sen. Sanders and Budget Committee Democrats are drafting the fiscal 2022 budget plan with an eye toward expanding Medicare’s benefit offerings, meeting the Biden administration’s goals with respect to mitigating climate change, and expanding access to pre-kindergarten education, affordable housing, child care, and paid family and medical leave – among other policies – these policy determinations are likely to be made by the authorizing committees in close consultation with party leaders.

The same is true on the tax policy front. The forthcoming budget resolution is expected to telegraph extensions of American Rescue Plan’s expansions of the child tax credit, earned income tax credit, and child and dependent care tax credit, along with offsetting tax increases on corporations and multinational enterprises and high-income individuals as well as beefed-up tax enforcement resources for the Internal Revenue Service. Nontax offsets – health care savings, for example – are also expected and may include

assumptions of additional revenue from long-term economic growth. Final authority for determining tax policy changes will rest with the two congressional taxwriting committees, however.

Don't forget the House

It bears repeating that the budget reconciliation process is not officially unlocked until both chambers agree on a unified budget resolution that includes reconciliation instructions. To that end, it's worth noting that the \$3.5 trillion topline number agreed to by Democrats on the Senate Budget Committee aligns with the roughly \$4 trillion budget resolution reportedly being drafted by House Budget Committee Chairman John Yarmuth, D-Ky.

House Speaker Nancy Pelosi, D-Calif., noted in a July 14 press release that the emerging budget agreement in the Senate "will contain many of House Democrats' top priorities, including transformative action on the investments needed to confront the climate crisis, to transform the care economy, and to expand access to health care."

"House committees," Pelosi said, "stand ready to work with the Senate, as this topline agreement is turned into legislative text." House Democratic leaders may, however, bypass committee consideration and instead take a Senate-passed budget resolution straight to the floor for a vote before adjourning for the August recess.

Threading a needle between moderates and progressives

If the fiscal 2022 budget resolution is adopted and a reconciliation process kicks off in earnest, Democratic leaders will have to navigate challenging political terrain – even among members of their own caucus – if they hope to send a human infrastructure bill to President Biden's desk. Assuming unified GOP opposition – which seems very likely – Democrats have no votes to spare in the evenly divided Senate and can afford to lose only three to four votes in the House (depending on when any package is taken up in that chamber).

Too big for moderates?: Several moderate Democrats are already expressing some level of concern with the size and scope of the Senate Budget Committee's emerging plan, including the effect additional federal spending could have on consumer prices.

Sen. Joe Manchin, D-W.Va., told reporters this week that consumers are already facing higher costs for gasoline and groceries and that the prices "they're paying [for] basically every type of product and goods have gone up considerably."

"And it's not just a threat, it's happening. So, is it going to continue to happen? Are we going to fuel it more?" he asked.

Manchin – who in recent weeks has indicated he would be more comfortable with a \$1 trillion to \$2 trillion package that is fully paid for – also laid down a hard line against any bill that upends incentives for fossil fuel production.

“You should be innovating and using more technology, and we should be leading the rest of the world in the technology that you can use ‘all-of-the-above’ energy sources,” Manchin said. “And I told [President Biden] that I was concerned about some of the language I’ve seen [that] moves away from fossil [fuels].”

For his part, Sen. Mark Kelly, D-Ariz., who faces re-election next year, expressed concern about increasing the deficit.

“Deficit spending often concerns me,” Kelly said. “So what I’m looking for is stuff that’s paid for and what the American people need. ...It’s important to me that these things are paid for. Incredibly important to me.”

Many of these same concerns were forcefully expressed July 15 by an unnamed moderate House Democrat who told *Punchbowl News* that “[g]iven red-hot inflationary pressures, and our strong desire to keep the House blue, a gargantuan \$3.5 trillion package, with massive new taxes, is a nonstarter for many of us....”

Too small for progressives?: Meanwhile, on the other end of the Democratic political spectrum, many progressives continue to believe that any reconciliation bill should be as expansive as possible.

Rep. Pramila Jayapal, D-Wash., who leads the nearly 100-member Congressional Progressive Caucus and who had earlier called for a \$6 trillion to \$10 trillion reconciliation package, told reporters July 15 that progressive support would ultimately be contingent on the details of any bill.

“Our caucus’ support is not guaranteed until we see how our priorities fit into the framework,” Jayapal said.

CBO updates revenue, deficit projections

Work on the budget resolution comes on the heels of an updated economic outlook from the Congressional Budget Office (CBO) showing projected fiscal year 2022 revenues of nearly \$4.4 trillion – up from the \$4.2 trillion the agency had estimated this past February. The revised amount reflects an increase of 25 percent in corporate income tax receipts, 14 percent in individual income taxes, and 3 percent in payroll taxes over the prior estimates. According to CBO, “projected revenues over the next decade are now higher because of the stronger economy and consequent higher taxable incomes.”

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The newest CBO projections also show deficits for fiscal year 2022 reaching just over \$1.15 trillion – up from the February estimate of \$1.06 trillion.

CBO’s projections assume that current laws governing tax and spending generally remain unchanged.

Fleshing out the bipartisan framework

As Budget Committee Democrats announced their deal on the parameters of a fiscal year 2022 budget resolution, the bipartisan group of Senate lawmakers responsible for crafting a separate bill to address the

nation's physical infrastructure needs continued working behind the scenes to turn their bare bones "framework" into fully formed legislation.

Schumer schedules procedural vote: The framework, which calls for \$973 billion in spending for physical infrastructure over five years – with \$559 billion designated as new spending – and is focused on transportation, water, broadband, and the power grid, as well as environmental remediation and "resilience," was rolled out to much fanfare on June 24. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 31, June 25, 2021.)

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Working out all of the details, drafting the actual legislative language, and determining whether the package raises sufficient revenue, however, has proven to be a more painstaking process. But even with the drafting still incomplete, Senate Majority Leader Schumer announced July 15 that the Senate will hold a cloture vote (a procedural vote to begin debating the measure) in less than a week, on July 21.

"Everyone has been having productive conversations and it's important to keep the two-track process moving," Schumer said in a floor speech. "All parties involved in the bipartisan infrastructure bill talks must now finalize their agreement so that the Senate can begin considering that legislation next week."

The group working on the bill failed to meet a self-imposed deadline of July 15 for resolving all outstanding substantive issues. While some members – primarily Democrats – view Schumer's move to schedule a cloture vote as a logical step if the Senate is to advance the bill before their summer recess (which is scheduled to begin August 7), others perceive it as a hardball tactic to build a false sense of urgency and force the negotiators to finalize provisions. In comments to Punchbowl News on July 15, Sen. Susan Collins, R-Maine, one of the core Republican negotiators on the package, described Schumer's announcement as the leader trying to "jam the bill before we finished drafting."

The framework's lead Republican, Sen. Rob Portman of Ohio, expressed a similar view.

"I don't know if we'll make anybody's arbitrary deadline timeline," Portman told reporters. "That's not the point. The point is to get it right. We're moving as fast as we possibly can. I'll be at it again late tonight, early tomorrow morning, and we'll keep working it, but we want to get this right. It's a big bill. This is an unprecedented amount of spending for our nation's infrastructure."

Republican concerns: The core group of five Republican negotiators – Portman and Collins plus Sens. Bill Cassidy of Louisiana, Lisa Murkowski of Alaska, and Mitt Romney of Utah – is working hard to keep all the initial GOP supporters on board amid rumblings from some of their colleagues who have developed concerns about backing specific provisions or the overall bill. Earlier this week, for example, Republican Sen. Jerry Moran of Kansas told *Politico* that the plan to boost funding for IRS enforcement by \$40 billion in an effort to narrow the "tax gap" – something supporters argue would generate revenue through increased tax collections – is raising "red flags" among some in the GOP, and Sen. Mike Rounds of South Dakota indicated he is waiting to see what the bill language looks like.

Both Moran and Rounds are among the 11 Senate Republicans who previously endorsed the framework.

“We don’t know what’s in it yet,” said Rounds. “I’m favorably impressed with what’s been done, but we’re going to wait and look at the final thing. So, there’s still a lot of negotiations going on.”

Following Schumer’s announcement of the upcoming cloture vote, Rounds did not commit to voting in favor of moving forward, telling reporters, “We’ll wait and see whether or not...[the] group actually says our product is ready for prime time. But there’s no reason to go to prime time if you’re not ready. ...What we don’t want to do is to bring out a product which is not ready and that would die.”

To overcome the Senate’s 60-vote filibuster threshold and advance the bipartisan package under regular order, Republicans will need to provide no fewer than 10 votes in favor of the bill. Failure to do so would likely lead Democrats to fold so-called “hard” infrastructure spending into the much larger bill they hope to pass under budget reconciliation protections, and likely with the support of only their own members.

The specter of this alternative path cuts two ways: If there is no bipartisan bill, Republicans will not be able to claim any credit for funding investment in roads, bridges, transit systems, and other infrastructure projects that poll well with much of the public; however, some in the GOP are betting that a single enormous bill could prove impossible for Democrats to pass, once again stymying long-sought infrastructure funding but also quashing the their proposed tax increases and significant spending on what Republicans view as liberal priorities.

“Part of the motivation is trying to make certain that we don’t spend \$6 trillion,” Kansas Republican Sen. Jerry Moran told *Politico* July 12, adding that if passage of a bipartisan bill “is lending itself toward that outcome then I would no longer be a ‘yes’ at that point in time.”

McConnell staying mum – for now: Senate Minority Leader Mitch McConnell, R-Ky., has not yet determined if he will support the legislation, and his decision will likely be crucial to its fate. He has reportedly told his members that they should assess the bipartisan bill and the reconciliation package separately, and Collins has described him as “very open-minded.” McConnell is unlikely to announce his decision until the bill language is in place and the Congressional Budget Office has determined whether the proposed funding mechanisms raise as much revenue as the framework’s creators hope – but that appears unlikely to happen before Schumer’s planned cloture vote.

There are big question marks about some of the revenue raisers included in the framework – including reducing the tax gap, repurposing unused unemployment benefits, and using dynamic scoring to take into account the macroeconomic effects of certain infrastructure investments – and the CBO’s verdict could alter the bill’s outcome. Republicans including Sens. John Cornyn of Texas, Shelly Moore Capito of West Virginia, and John Thune of South Dakota have indicated the score will be a key determining factor in their votes.

“My sense is that even members of the group [that endorsed the framework] are pretty concerned about the pay-fors,” Thune, the Republican whip, said on July 14. “I think they want to be for infrastructure. I had three

conversations this morning with members of the group who are, after the meeting last night, I think even more skeptical about the pay-fors and whether or not they're actually going to be scorable and do what they're designed to do."

On the other side of the aisle, Democratic Sen. Jon Tester of Montana was more optimistic about the bipartisan bill July 15, saying in an MSNBC interview, "The hang-ups now are pretty small, to be quite frank with you. There are still some issues on pay-fors, but...we've worked on harder things than this. And so we'll get it done."

The tax press reported July 15 that Senate negotiators might drop their plan for additional IRS spending and move it into the reconciliation package to assuage Republican concerns – but the group had estimated that provision would net \$100 billion in revenue (through increased tax collections), so its removal would require negotiators to find another so-far elusive offset that enjoys bipartisan support, scale back the infrastructure investments they hope to fund, or agree to deficit-finance a portion of the package.

Pelosi to Senate: You first...

To protect her members from having to vote on legislation that may not clear the Senate, House Speaker Pelosi has said she will not bring the bipartisan bill up for a vote until and unless the Senate passes both that bill and the larger reconciliation package.

Members of the House have been told to plan on considering the bipartisan bill in July, but with the chamber's summer recess scheduled to begin July 30 (a week before the Senate) and the Senate unlikely pass both bills by that date, it will probably be September before the House takes up either piece of legislation unless Pelosi opts to delay the recess, something many expect her to do in order to move the budget resolution and give the authorizing committees clear benchmarks to work on during the month of August.

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