

Democrats contend with policy, procedural issues as Build Back Better Act reaches the Senate

It's been two weeks since the House passed its version of the Build Back Better Act (H.R. 5376), the \$1.75 trillion tax-and-spending package that congressional Democrats intend to move through Congress under budget reconciliation protections. But in their first days back from the Thanksgiving recess, Democrats in the Senate have made little progress—to all outward appearances, at least—in resolving a number of issues with the measure, even as Majority Leader Charles Schumer, D-N.Y., says he wants the upper chamber to vote on final passage before Christmas. Rifts over the state and local tax (SALT) deduction, paid family and medical leave, Medicare expansion, and more are under discussion behind the scenes.

The Senate parliamentarian is currently working through the House-passed provisions to determine whether they comply with stringent requirements in the Senate that govern the reconciliation process. This step, known as the “Byrd bath” (after budget reconciliation rules crafted by former Democratic Sen. Robert Byrd of West Virginia), could force some changes to the bill, but other modifications being considered stem strictly from policy disagreements among the Democrats.

While legislation moved under budget reconciliation can pass the Senate with a simple majority rather than the 60-vote supermajority typically required in that chamber, Democrats control only 50 seats and will need all of those votes, plus the tie-breaking vote of Vice President Kamala Harris, to secure the passage of the Build Back Better Act since Republicans are expected to remain unified in opposition. To hold his caucus together, Schumer is working to accommodate members who are demanding changes to various provisions.

SALT deduction cap

A provision in the House-passed proposal that would increase the limitation on the SALT deduction from \$10,000 to \$80,000 for married couples filing jointly (\$40,000 for single filers) for nine years, return it to \$10,000 for another year, and then repeal it thereafter—something that was included at the behest of a handful of Democratic House members from high-tax states such as New Jersey and New York—has prompted pushback from some Senate Democrats, who said the proposed change would primarily benefit wealthy taxpayers. (It also has proved to be ripe for criticism by Republicans.)

Sens. Robert Menendez, D-N.J., and Bernie Sanders, I-Vt., had indicated before the Thanksgiving recess that they were working together to craft an alternative proposal, but the two senators determined this week that they aren't on the same page. Sanders wants to eliminate the cap permanently for individuals earning less than \$400,000, while Menendez said he wants a revenue neutral threshold, which, according to estimates, would be \$550,000 for individuals and about double that for married couples.

“We said that we believe that SALT should be whatever is revenue neutral—whatever figure leads us to revenue neutral,” Menendez told reporters November 29. “Well, the Joint Tax Committee came back, and revenue neutral is about \$550,000 for an individual and a little less than double that for a married couple and that's what I thought we were doing.”

Sanders, however, said Menendez’s approach means “the numbers go up higher and the distributional impact is more regressive.” He also noted that his preferred \$400,000 threshold would generate “a couple hundred billion dollars” in budget savings that could be used to finance other priorities, such as expanding Medicare.

Sanders and Menendez are now said to be working on separate proposals to address the SALT deduction cap, although neither one has released legislative language as of press time.

The Manchin factor

Sen. Joe Manchin, D-W.Va., has been one of the headline players in the Build Back Better effort, weighing in throughout the year on various elements of the bill and withholding his commitment to vote for the legislation, and he continues to seek changes that are at odds with others in his party. Manchin met separately November 30 with Schumer and Senate Minority Leader Mitch McConnell, R-Ky., to discuss the Build Back Better legislation and other issues.

Some of the changes Manchin has said he wants to the current bill—and that still appear unresolved—are the addition of work requirements and means testing for the expanded child tax credit, elimination of the bonus tax credit for electric vehicles assembled in the US by unionized workers, and the removal of a provision for paid family and medical leave. (Manchin has said that family and medical leave should be addressed in a separate, bipartisan bill.)

Manchin has also aired more general concerns about the number of temporary provisions in the bill—something he views as budgetary gimmicks intended to hide the full cost of the package—as well as the potential inflationary impact of the Build Back Better Act, and has reportedly indicated to colleagues that he would like to wait and see how things play out in the economy this winter before voting on the legislation.

“I heard an awful lot over the Thanksgiving break that prices were high and people were very much upset about that and concerned about [whether] inflation [is] going to get worse.” Manchin told reporters this week.

There is no deadline for the getting an approved package to the White House, but President Biden and most Democrats have been considering the end of 2021 as their target, and Schumer said this week that he intends to “get the bill done with 50 Democrats before Christmas.”

After his meeting with Schumer on November 30, Manchin told reporters he did not discuss the timing of a vote on the legislation.

“I don’t control the clock,” he said. “[Leader Schumer] has to make a decision about what he wants to do.”

Given the Democrats’ narrow margin of control in the Senate, however, Manchin—or any other Democratic senator—is in a position to exert considerable leverage over the contents of the legislation and the timing for bringing it to the floor. Arizona Democratic Sen. Kyrsten Sinema, for example, who, like Manchin, has raised concerns over the size and scope of the Build Back Better Act, was noncommittal when asked during a

December 2 interview with CNN whether she would be a “yes” vote when the bill is brought up for final passage.

“I am always prepared to vote and to vote for what’s right for the interests of Arizona,” she replied.

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Tax Policy Group
Deloitte Tax LLP

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