

Bipartisan group mulls tax provisions for potential climate change bill

In the face of skepticism from many outside observers, a bipartisan group of senators met twice this week to discuss a possible bill to address climate change and energy security. The small group, which kicked off April 25, was convened by Energy and Natural Resources Committee Chairman Joe Manchin, D-W.Va., and Sen. Lisa Murkowski, R-Alaska, and has some Democrats concerned that this new endeavor will further subvert their stalled effort to pass a broader tax-and-spending bill (with clean energy title) under the fast-track budget reconciliation process.

Manchin has been a key stumbling block to advancing what's known as the Build Back Better agenda, which will need all 50 Democratic senators plus the tie-breaking vote of Vice President Kamala Harris to pass. (For prior coverage on the status of efforts to move Build Back Better legislation, see *Tax News & Views*, Vol. 23, No. 16, Apr. 29, 2022.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220429_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220429_1.html)

Carbon border-adjusted tax and other energy provisions

Following a meeting of the bipartisan group on May 2, participants said they had discussed the concept of a carbon border-adjusted tax—essentially levying tariffs on certain fossil fuels and other carbon-intensive imports coming from countries with weaker climate policies than the US. The idea, which is also being advanced by the European Union, would be to put pressure on countries that are not moving quickly enough to cut their greenhouse gas emissions.

Senate Finance Committee member Bill Cassidy, R-La., was quick to clarify to reporters following the meeting that he does not view the concept as a carbon tax, adding, “I’ve spoken to Republicans who are very interested in this.”

Specific language has not been released, but as currently understood, the border adjustment tax is not expected to directly affect domestic manufacturers but could fall on imported components.

Cassidy said domestic manufacturers that use natural gas instead of more carbon-intensive sources of energy would have a big competitive advantage under the tariff system, because the US policies are more stringent than those in most other countries. Manchin said he is promoting a North American zone that would include Canada and Mexico.

Democratic Finance Committee member Mark Warner of Virginia, who is also participating in the bipartisan group, said he is working to understand exactly how the carbon adjustment would operate.

“I’ve always thought a price on carbon, a market mechanism, is where I think the world ought to be headed, and it also puts a penalty in place for those countries like China,” Warner said.

Energy tax incentives: The group held an additional meeting this week, on May 4, during which, according to *E&E News*, they discussed a wide range of energy-related tax incentives, including those in the Build Back Better legislation that cleared the House this past November as well as those in a freestanding clean energy package that was approved by the Senate Finance Committee in May of last year. (A detailed summary of the tax provisions in the House-passed legislation is available from Deloitte Tax LLP. For details on the Finance Committee energy package, see *Tax News & Views*, Vol. 22, No. 27, May 28, 2021.)

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/build-back-better-tax-legislation.html?id=us:2em:3na:tnv:awa:tax:050622&sfid=7015Y000003WdCFQA0>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210528_2.html

Senators who spoke to reporters after the meeting did not indicate that there was consensus on a possible tax credits package, although taxwriter Tom Carper, D-Del., commented that “I think some progress was made in better understanding what the Finance Committee voted on in the energy tax package that was debated and voted on months ago.”

EV or not EV?: One energy provision that appears to have no support from Sen. Manchin is an expansion of the current-law tax credit for electric vehicles (EVs) that is included in the House-passed Build Back Better legislation.

During a recent Senate Appropriations Committee hearing with Transportation Secretary Pete Buttigieg, Manchin questioned the merits of providing a tax credit for buyers of EVs at a time when demand for EVs exceeds the supply.

“There’s a waiting list for EVs right now,” Manchin said, “[b]ut they still want us to throw \$5,000 or \$7,000 or a \$12,000 credit to buy an electric vehicle. It makes no sense to me whatsoever, when . . . we can’t produce the product for the people who want it, and we’re still going to pay them to take it? It’s absolutely ludicrous in my mind.”

Buttigieg responded that the EV credit in the Build Back Better legislation reflects the need for the US to act on climate change in “months rather than years.”

There is currently a federal tax credit of up to \$7,500 for EV purchases depending on the make and model of the vehicle. The Build Back Better bill as approved by the House proposed an expanded credit of up to \$12,500. (The maximum credit amount would apply to EVs that meet certain battery capacity, domestic assembly, domestic content, and collective bargaining standards.)

Are there really 60 votes?

Democratic climate hawks have been skeptical that enough Republicans would sign on to a bill that has what they consider strong enough measures to address climate change. Legislation done outside of the reconciliation process would need 60 votes in the Senate to avoid a filibuster, meaning at least 10 Republicans would have to vote in favor if all 50 Democrats support it.

After the bipartisan group's kick-off meeting late last month, Democratic Sen. Sheldon Whitehouse of Rhode Island scoffed at the idea that anything would come of the new effort with the GOP.

"They're just not capable of that," Whitehouse said. "There's literally nothing happening in the bipartisan effort. One Republican senator showed up at one meeting."

Rep. Sean Casten, D-Ill., was similarly pessimistic about the prospects for a bipartisan deal. "I don't know how you can be in Congress for any significant period of time and come to the conclusion [that] there is a significant bloc of Republicans who are going to take climate change seriously," he said in a May 2 interview.

Some Republicans who are not participating in the discussions have also expressed their doubts that the bipartisan effort will go anywhere. Sen. Mike Braun, R-Ind., recently commented that he thought the meetings were simply "for show" and that there is little chance 10 Republicans will support legislation.

Running out the clock on Build Back Better?

Another Senate Republican, granted anonymity to speak candidly, told *Politico* this week that the bipartisan effort appeared to be aimed at derailing Democrats' budget reconciliation agenda by consuming time and sapping momentum for negotiating a revised tax-and-spending deal that could win support from all 50 Senate Democrats.

For his part, Sen. Kevin Cramer of North Dakota, a Republican participating in the bipartisan talks, told reporters the GOP isn't explicitly trying to kill Democrats' party-line bill by working across the aisle on the climate change agenda; but he commented if that if ending Build Back Better happened to be a byproduct of the bipartisan climate change negotiations, then "hallelujah."

Given the limited time remaining on the legislative calendar before the budget reconciliation instructions authorizing the Build Back Better legislation expire at the end of the fiscal year on September 30 and the lack of progress that has been made on hammering out a compromise measure, many are pessimistic that the party will succeed in finalizing even a narrow version of their proposal to raise taxes on businesses and high-income individuals and provide targeted spending for certain Democratic priorities.

"There are varying levels of optimism" among Democrats about the prospects for a party-line bill, Senate Majority Whip Dick Durbin, D-Ill., recently told reporters. "I am the most skeptical."

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