

CLIENT ALERT

An Update on The Status of Infrastructure Legislation

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Infrastructure reform has been the talk of Washington, D.C., for years. The Trump and the Biden Administrations both made it a high priority, and the issue has now come to a head in Congress. In July, the U.S. House of Representatives passed the \$715 billion INVEST in America Act (H.R. 3684) along a largely party-line vote. After months of behind-the-scenes negotiations, the U.S. Senate moved decisively to pass a \$1.2 trillion Bipartisan Infrastructure Bill followed by a \$3.5 trillion partisan Budget Resolution just prior to starting recess on August 11, 2021. The U.S. House of Representatives is scheduled to return to session on August 23, 2021 to take up both Senate-passed measures. While the prospects for infrastructure reform becoming law are stronger than they have been in years, there are a number of potential pitfalls that could derail the efforts this fall. The following is a summary of the current state of play in this August recess which will soon become an incredibly busy fall.

The Legislation Status: The Bipartisan Senate Infrastructure Bill was negotiated by five Republican and five Democratic Senators with direct involvement by the White House. It followed an unsuccessful attempt by ranking members for several Senate committees with jurisdiction over infrastructure to broker a deal with the White House. The bipartisan deal was drafted as an amendment in the nature of a substitute to the House-passed INVEST in America Act. In taking up the measure, the Senate allowed an open amendment process that saw more than 500 amendments be introduced. However, only 11 amendments were approved. By a 69-30 vote, the \$1.2 trillion Bipartisan Infrastructure Bill – which includes \$550 billion in new spending over eight years – passed the U.S. Senate on August 10, 2021.

The Details: The Bipartisan Infrastructure Bill authorizes a \$550 billion increase in appropriations for surface transportation, broadband, and water infrastructure programs over current levels over eight years. The legislation would allocate \$110 billion for roads and bridges, \$66 billion for rail, \$65 billion for the power grid, \$65 billion for broadband, \$55 billion for water projects, \$47 billion for cybersecurity and climate change mitigation, \$39 billion for public transit, and \$25 billion for airports. Additionally, the legislation would spur investment in electric vehicle charging stations and prompt a transition to electric school buses, both of which are major priorities for the Biden Administration and its goal to transform the American economy to net-zero emissions. After passage of the Bipartisan Infrastructure Bill, the Senate took up a Budget Resolution that would direct authorizing committees to develop legislation to increase investments in health care, clean energy, child care, education and other social programs by \$3.5 trillion, with offsetting increases in revenue and taxes. The legislative measures would be compiled into a Budget Reconciliation Bill that the Senate would take up in the fall and could pass with only a simple majority vote. The Budget Resolution passed by a 50-49 vote and included a measure that would limit eligibility for electric vehicle tax credits for individuals earning less than \$100,000 year or for vehicles costing less than \$40,000.

Pay-Fors: During the Senate debate on the Bipartisan Infrastructure Bill, the Congressional Budget Office (“CBO”) released an analysis of the bill’s spending and revenue measures, concluding that the bill would add a net \$256 billion to the federal deficit over a decade. This was in stark contrast to the claims by the bipartisan Senate negotiators that the bill was fully paid for and deficit neutral. In its analysis of the bill, the CBO brushed aside several significant pay-fors, including the repurposing of unused COVID-19 relief funds and the use of savings generated by states terminating pandemic unemployment benefits. These

measures, while projected by Senators to generate roughly \$263 billion in funding for the legislation, were found by the CBO to only save approximately \$22 billion. Although deficit hawks made their position clear in the Senate, the additional spending, despite the unfavorable CBO score, was able to clear the Senate with broad support. Undoubtedly, however, the debate around the federal deficit will continue as Democrats consider even more generous measures. Consideration of the \$3.5 trillion Budget Reconciliation Bill will likely even draw the attention of some moderate Democrats who may not view the spending as palatable, particularly as the 2022 midterm elections approach.

Next Steps: The Senate-passed Bipartisan Infrastructure Bill was sent to the U.S. House of Representatives, where it faces an unclear future. Speaker Pelosi has called upon her colleagues to return early from their annual August recess on the week of August 23 to chart a path forward. Because the Senate compromise was passed as an amendment to H.R. 3684, the INVEST in America Act, some in the House are calling for a traditional conference committee to resolve the differences between the two measures. Instead, Speaker Pelosi has signaled an interest in taking up the Senate-passed bill, but only in conjunction with a successful vote on the Budget Reconciliation Bill. The fate of the Budget Reconciliation Bill is uncertain in both the House and the Senate, as progressives and moderates spar over future spending for “human infrastructure” projects.

In the coming weeks, all eyes will be on the House and Speaker Pelosi, who has largely aligned with the progressive wing of the caucus in seeking approval of the larger Budget Reconciliation package prior to a vote on the Bipartisan Infrastructure Bill. Speaker Pelosi penned a letter on Sunday, August 15 requesting that the House Rules Committee “explore the possibility of a rule that advances both the budget resolution and the bipartisan infrastructure package,” though a group of nine moderates House members already rejected the compromise proposal. It is still not clear which wing of the party will prevail. Both the progressives and moderates appear to have the votes to support their distinct and competing strategies. They also appear willing to take a public stand signaling that this could become a prolonged fight potentially halting progress on either legislative package. Ultimately, it may be up to the White House to push through a compromise that can be enacted into law.

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