

# PUBLICATION

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## Build Back Better and Infrastructure Bills

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**Baker Donelson's public policy group and the Daschle Group are pleased to provide our fifth update on developments regarding infrastructure and appropriations legislation. This is the fifth update in a series of alerts designed to keep you informed of the negotiations underway and the progress being made. Previous installments are available [here](#), [here](#), [here](#) and [here](#).**

### In Short

After months of negotiations, the Democrats in the House of Representatives have released the legislative text of the Build Back Better Act (BBBA), HR. 5376. A section-by-section summary of that legislation can be found [here](#), and text can be found [here](#). This package is less ambitious than previous iterations, but retains major social programs, tax changes, and climate provisions. Centrist Democratic Senators have indicated that the House BBBA needs adjustments to pass the Senate. Progressive House members continue to tie passage of the BBBA to a vote on the infrastructure bill, the \$1 trillion Infrastructure Investment and Jobs Act (IIJA). The passage of both the BBBA in some form and the Senate-passed IIJA is likely, but hurdles remain. Complications surrounding the BBBA have slowed down action on appropriations legislation this year.

### How We Got Here

After the Senate passed the IIJA with bipartisan support on August 10, Republican members of Congress remained unanimously opposed to any major social spending package. Many Republicans in the House of Representatives shifted their positions from supporting to opposing the IIJA after it passed the Senate. This gave progressive House Democrats leverage over the IIJA, as their votes were needed for passage. Progressive Democrats tied their support of the IIJA to a proposed \$3.5 trillion social spending package, known as the Build Back Better plan.

House committees passed text of the Build Back Better Act, also known as the "reconciliation bill," with only the support of the House Democrats in early September. The House Budget Committee assembled the final bill with some modifications on September 28. The Senate did not consider any bills as Senate Committees were evenly divided and action required Republican support. However, Democratic Senators did submit draft proposals. Notably, Senator Ron Wyden (D-OR) released several discussion drafts proposing major changes to the tax code. There were significant differences between House and Senate proposals and attempts were made to bridge gaps throughout this process.

In the past few weeks, key swing votes Senators Kyrsten Sinema (D-AZ) and Joe Manchin (D-WV) sought to limit the cost of the proposed BBBA in the House and rejected several key elements. Notably, Senator Sinema opposed any increase in the corporate, individual, or capital gains tax rates and initially opposed allowing Medicare to negotiate certain drug prices. Senator Manchin opposed the size of the bill, seeking a \$1.5 versus \$3.5 trillion package and opposed significant climate proposals, including the Clean Energy Performance Program. Manchin also opposed a tax on billionaires and the inclusion of paid family and medical leave.

### The Build Back Better Act

The most recent version of the BBBA, the House Rules Committee Print 117-18, was released on November 3. It is narrower in size and impact than prior iterations. In terms of investments, climate provisions take up

around 30 percent of the bill, while childcare, paid family and medical leave, and the expansion of Medicare are other major spending items. Many provisions are authorized temporarily to limit the bill's cost. The current package is estimated to cost over \$1.75 trillion and raise over \$2.1 trillion in revenues, although the Congressional Budget Office (CBO) has not officially scored the bill. The BBBA would provide universal pre-K for three- and four-year olds; provide four weeks of paid family and medical leave; allow Medicare to negotiate the price of certain pharmaceuticals; invest over \$550 billion in the green energy economy; make major investments in childcare, including by extending the expanded child tax credit; extend Medicare and Medicaid programs; provide major workforce programs; increase taxes on certain high-income individuals; and reform the corporate and international tax codes.

### **Hurdles Remain**

Neither Senators Sinema nor Manchin have endorsed the package and certain House Democrats have expressed concerns. While it is believed that most of the package had input from Senators Manchin and Sinema, the most recent version includes certain provisions, namely the paid medical and family leave provision and an adjustment to the state and local tax (SALT) deduction cap, that were not agreed to by these Senators.

Congress may still have to jump through several hurdles to pass the final BBBA:

- First, a group of House Democrats is seeking the inclusion of protections for immigrant populations in the legislation that the Senate Parliamentarian could reject. Senator Manchin has indicated that he will not allow the Senate to override the Parliamentarian. It is not clear if these members will vote against a final bill without the inclusion of these items.
- Second, Senator Manchin disapproves of the SALT cap provision, viewing it as a budget gimmick that costs more than its official score due to its likely extension. Other Senators also have issues with the distributional impact of the SALT provision, noting that it primarily benefits the wealthy. However, a group of centrist House Democrats has indicated that they may vote against a bill that does not include a SALT cap provision.
- Third, the Congressional Budget Office (CBO) has yet to officially score the bill. A few centrist Democrats have stated that they will not vote on a bill until the CBO has scored it. If the bill does not "pay for itself" as determined by the CBO, Senator Manchin has indicated that he would demand additional revenue raiser or spending reductions. Additional revenue raisers could face opposition from Senator Sinema who has opposed tax rate increases and spending reductions could anger House progressives.
- Finally, it is possible that Democrats view the BBBA as the only vehicle for increasing the debt limit (limit reached around December 3). If Senators need to re-open the budget reconciliation process to insert a debt limit increase provision in a new budget resolution, such a maneuver would take time and require at least one Senate Republican vote in committee.

### **Likely Path Forward**

The timeline remains unclear for passing both the BBBA and IIJA, but their fates remain tied. House leadership has indicated that it may vote for the BBBA as soon as this week. Majority Leader Chuck Schumer (D-NY) has indicated that the Senate will not consider the bill until House passage and after the Senate recess, which concludes on November 15. If the legislation moves to the Senate, it will be reviewed by the Senate Parliamentarian and certain provisions could be removed if they fail to meet the Senate's Byrd Rules for a reconciliation bill. The Senate is likely to remove provisions that Senators Manchin and Sinema feel that they can remove and still allow for final House passage. If the Senate passes the bill, it will then go back to the

House potentially for final passage. After House passage, House leadership would then take up and pass the IIJA. This would all be done, in theory, with only Democratic votes although it is possible that some Republicans vote for the IIJA.

Legislation to fund the government and raise the debt ceiling will be required by December 3, which should pressure Democrats to pass both bills before this date. While the margins are thin, a great deal of progress has been made on the BBBA and the IIJA and pressure will mount on Democrats to get this legislation passed.

### **Likely Continuing Resolution Coming**

The uncertainty surrounding the BBBA, along with Republican frustrations with the legislation, has slowed the progress of Fiscal Year 2022 appropriations legislation. Democrat and Republican appropriators are split on the level of spending between defense and non-defense discretionary funding in Fiscal Year 2022 appropriations bills. They are also divided on what might be attached to such legislation, including a provision to raise the debt ceiling.

A short-term continuing resolution (CR) will almost certainly be needed to fund the government past December 3. Unless an agreement can be reached quickly on top-line spending figures, the debt limit, and other year-end legislation, it seems likely that a longer-term CR will be needed.

We will continue to provide insights on major developments with the BBBA, the IIJA, and appropriations legislation in future updates. For more information, please contact one of the authors of this alert.