



Policy Resolution Group Reconciliation & Infrastructure Update

October 1, 2021

Negotiations on Reconciliation and the Infrastructure Bill Still Ongoing – PRG Will Provide Additional Updates as Necessary

Please find below the latest addition of the Policy Resolution Group's FY2022 Budget Reconciliation & Infrastructure Update.

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State of Infrastructure and Reconciliation Negotiations

The past week featured a series of twists and turns in negotiations over the bipartisan infrastructure framework and reconciliation package. While Speaker Pelosi (D-CA) had initially committed to a vote on the Infrastructure Investment and Jobs Act on September 27, the Congressional Progressive Caucus delayed the vote by threatening to vote against the bill without stronger commitments from Sen. Joe Manchin (D-WV) and Sen. Kyrsten Sinema (D-AZ) regarding what provisions they would support in a partisan reconciliation package.

Democratic leadership in both the House and Senate will continue to try and break the logjam between moderates and progressives over a reconciliation framework. Sen. Manchin has said that he is unlikely to support a bill with a price tag above \$1.5 trillion, but progressives have reiterated that that investment would be insufficient to combat climate change and to deliver on the social safety net portions of President Biden's agenda. Sen. Sinema's priorities are still fairly hazy, causing significant consternation among progressives who believe she is not negotiating in good faith. As

negotiations enter crunch time, Democrats must build trust and form a consensus on a reconciliation framework to unlock the rest of President Biden's agenda.

Liam Donovan's Bottom Line

Bottom line: The beginning of the end(game). After a turbulent week of promises, power plays, and surprise reveals, Democrats continue to negotiate a path forward on their reconciliation package, with the fate of the bipartisan infrastructure bill hanging in the balance.

Following a series of weekend audibles by House leadership, ranging from a promised vote on the yet unfinished Build Back Better Act to a delay in consideration of the Infrastructure Investment and Jobs Act, it became clear that Speaker Nancy Pelosi would have her work cut out for her in wrangling the votes, something she built in several days to do. With no immediate developments in the negotiations or cover from President Biden, an emboldened progressive caucus sensed weakness and exploited the vacuum, forcing further delay of a vote that Pelosi had insisted would occur late into Thursday night.

If progressives have a spring in their step over their newfound clout, however, they're also grappling with the revelation that West Virginia Senator Joe Manchin's demands have been clearer and less robust than they had imagined. POLITICO on Thursday published what amounts to a term sheet for Manchin's reconciliation demands, dated in late July and countersigned by Leader Chuck Schumer. The understanding of those terms is what secured Manchin's vote for the budget resolution with instructions that enabled the Democrats much larger \$3.5 trillion framework.

While the revelation of the slimmed topline was hardly met with enthusiasm by progressives, it did seem to expedite what had been stalled negotiations with little clarity over the scope or scale. Negotiators from the administration, congressional leadership, and the relevant caucuses worked into the night to seek a "framework" agreement, and have reconvened this morning in search of a breakthrough. In the meantime, Speaker Pelosi has extended the previous legislative day (September 30) to comply with the underlying rule, signaling her continued intention to pass the bipartisan bill.

There are two missing links in all this. The first is Senator Kyrsten Sinema, whose demands have always been more opaque and more oriented around tax concerns than Manchin's. Could Sinema support the Manchin terms as written? Perhaps, but her position against many of the proposed tax hikes make even the \$1.5 trillion figure difficult. And second, President Joe Biden. There is no deal without the President's vocal support, nor will said deal facilitate passage of the bipartisan bill without his strong backing. All of which means that the President will have to determine how badly he needs a win, and at what cost. Currently, the White House seems determined to bring the holdouts up to \$2 trillion, and would likely declare victory in that event. Manchin would seem like an easier get than Sinema, but neither seem inclined to go that high. And to the extent there's an appetite in the White House to take a lesser deal, say in the mid to high \$1 trillion range, it could take time for that reality to set in, particularly as he must sell it to progressives.

At any rate, all eyes are on President Biden as we enter the endgame. The storybook ending would be for the old lion of the Senate to serve as the closer, sealing the deal, uniting the clans, and selling the framework as the key to enacting his agenda, with passage of the bipartisan bill as the next step toward Building Back Better. Whether we've reached that chapter yet remains to be seen, and with the debt limit impasse encroaching on the schedule, that page may have to be dog-eared unless an agreement can be reached in the coming days.

Follow Liam on Twitter: [@LPDonovan](https://twitter.com/LPDonovan)

The Breakdown with Yasmin Nelson

The Breakdown: Whoever blinks first loses. Congress managed to temporarily avert a government shutdown yesterday, extending government funding to December 3. Big cheers because this was not easy. The next big vote is the Bipartisan Infrastructure Bill (BIF). To the dismay of House Progressives, it seems as though Speaker Nancy Pelosi is pushing through on her plans to separate the BIF and the reconciliation package, even with the threat from Progressives to kill the BIF. As you know, the original plan was to vote on the BIF and reconciliation bill in tandem. It is not clear whether Pelosi is hoping Democrats will come together on this or will look to Republicans to pass the bipartisan infrastructure bill. She doesn't need 218 from her party, meaning she could lose several votes on the floor, but not too many or she risks the bill not passing. Democrats will need to pick up somewhere around 12 Republicans votes should Speaker Pelosi not be able to unite the entire caucus.

In the Senate, Senators Manchin and Sinema have shared that the \$3.5 trillion reconciliation package is too expensive, potentially threatening the Biden-Harris domestic policy agenda. Progressives will not support the BIF without also voting on the reconciliation package. Revealed today was a document Manchin shared with Leader Schumer on July 28 cutting the reconciliation bill down from \$3.5 trillion to \$1.5 trillion, among other propositions from the West Virginian.

There's a lot left to be determined however, we may know more after this weekend. I don't expect Speaker Pelosi to put a bill on the floor if she doesn't have the votes, so if you see a vote on the BIF happening, she likely has created some kind of deal with Progressives or another path to passage with help from the Republicans.

Follow Yasmin on Twitter: [@YasminRNelson](https://twitter.com/YasminRNelson)

Where We Are With Energy Tax by Timothy Urban

Notwithstanding this dramatic period of conflict amongst different factions of the Democratic party over the contours of the FY2022 budget reconciliation package, we continue to believe that the outlook for enactment of an energy and environment tax title looks positive. Since negotiations among the principals are proceeding today (Friday, October 1) it is likely that circumstances will require that PRG transmit another update soon. However, as a reminder, the fundamentals remain the same: Democrats control the White House, the Senate, and the House; the legislation described in the FY2022 budget reconciliation package constitutes a very high priority for the President; there is a legislative procedure that allows Democrats to process this package without GOP votes and without fear of a GOP filibuster; everyone acknowledges that a failure to bring this process to fruition could hurt the party in the upcoming midterm elections; and this President, more than some of his predecessors, has a demonstrated proficiency at bringing Members together and concluding legislative deals.

In the absence of a final reconciliation tax agreement upon which to comment, here are some additional thoughts about outstanding, and interesting, energy and environmental tax policy issues that lawmakers must resolve along the way to a House-Senate conference agreement:

- Clean energy tax incentives - looking at a possible hybrid structure: Over the last few years, many energy companies and trade associations have weighed in on the Wyden tech-neutral structure linking tax incentives to environmental performance (see the Clean Energy for

America Act). Most people praise the potential energy and environmental benefits that could accrue to implementation of this aspirational regime, which provides tax benefits based upon empirical environmental performance rather than arbitrary technology-specific categories - but, the concerns sometimes voiced relate to the need for a possibly protracted adjustment period required so that taxpayers can plan and the Internal Revenue Service can promulgate regulations. Recently, Hill staff have begun to question whether there might not be an opportunity to meld the House GREEN Act with the Clean Energy for America Act by using the House blueprint as a multi-year transition.

- Plastics tax proposal runs into complicated reality: On August 5, 2021, Sen. Sheldon Whitehouse (D-RI) introduced the REDUCE Act (The Rewarding Efforts to Decrease Unrecycled Contaminants in Ecosystems Act of 2021, or S. 2645) for the purpose of accelerating the adoption of plastics recycling by placing a new 20 cent per pound excise tax on virgin plastic resin. The concept is straightforward: Change the economic relationship between the price of new and recycled plastics - leading to increased adoption of recycled materials. As one might expect, the proposal has found its way into the debate over the revenue raisers being assembled to pay for the FY2022 budget reconciliation package. However, just this week, an industry letter was sent to the Hill painting a more nuanced picture of the realities behind the plastics markets. Specifically, industry officials suggested that a broad cross-section of the plastics and foam sector agrees with the need to do more to support plastics recycling, but asserted that at the current time there is not a safe and sufficient supply of recycled plastic material with which to supplant the virgin material. (As an aside, if one presumes that manufacturers will pass the tax on to consumers, it would be interesting to see whether this new tax might disproportionately fall on Americans with incomes below \$400,000, as do many excise taxes on tobacco and consumer products). How this will be resolved will depend upon both how effectively the industry recruits champions amongst House and Senate Democrats, and also upon how big a bill is agreed to and how much revenue is required in its offsets.
- Further jostling regarding carbon capture tax credits: In past newsletters we noted that companies and coalitions organized to advocate on behalf of enhancements to current law sec. 45Q. These groups were lobbying for extension of the credits with increased rates (see for example The CATCH Act, H.R. 3538) and removal of any House and Senate proposed facility-level minimum capture requirements. Now, in addition to those marquee issues, some in the sector are looking to ensure that rules requiring contemplation of any subsidized energy financing are taken off the table as well. Given the administration's record of supporting carbon capture as an important ingredient to national decarbonization of the energy sector, and given Senator Manchin's well-known interest in strong CCS incentives, this is another issue that may be far from over.

Summary of Comments by Senator Joe Manchin (D-WV) on CEPP During the Senate Energy and Natural Resources Committee Hearing on FERC Jurisdiction

Earlier this week, Chairman Manchin and Republicans used the Senate Energy Committee's hearing on the Federal Energy Regulatory Commission—FERC—as an opportunity to voice their concerns that the Clean Electricity Performance Plan (CEPP) would have a detrimental effect on reliability and, despite the clean electricity grants, would result in higher prices for consumers. Also noteworthy, in his closing statement, Chairman Manchin voiced concern that the CEPP's clean electricity grant would be paying utilities for clean electricity that they plan to deploy anyway. As currently drafted, the House CEPP would only pay eligible utilities for clean electricity above a 1.5% increase—the 1.5%

increase being what they have set as the business as usual deployment of clean electricity. Chairman Manchin's comments could signal that he thinks this rate is too low. See the full text of Chairman Manchin's closing statement below:

Chairman Joe Manchin (D-WV)

"I can tell you all have lively discussions and maybe you all should have a fifth [FERC Commissioner confirmed]. Commissioner Danly, I see that you are often on the other side of all this and I know how you feel from experience. You know what I'm referencing. I'm concerned about the Clean Energy Standard. You don't have to comment but it's the concern I have as we start paying utilities to do what I think they are going to do anyway. I look at the transition that is going on now and what has happened since 2000-2020. We have transitioned to a completely new delivery system and we did not pay the utilities to do it. If we are going to do anything with utilities and transmission I know there is an awful lot of money to be made in transmission. Probably more money to be made in transmission than there is in production. That being said, if you build a line you have to share in the resources. Don't give me the "everyone is stopping you." I put a line in that basically shared with the counties that it went through. And we just shared the revenues. Now we are going after the new areas and I'm not understanding the connectivity from the standpoint of the federal government will give you a loan to go out into the desert for wind, solar, or whatever it may be. But there should be a period of time when that is going to be profitable. I'm taking all the risk away from the front end, but until it is inter-connected and starts making money, then the Treasury should get its money back. They want to give the money as a grant up front. That makes no sense to me. I just can't for the life of me keep writing checks from our Treasury to let publically traded companies with investors keep benefitting off of us with nothing in return to the taxpayer. That is the biggest problem I have. I'll be calling on you all to help me through this and seeing if there is a way. I want to build out, the customers are demanding it. I think the statement was made that if we give and pay them incentives, we basically change their portfolio by 2030. Reliability could be the big loser because we are moving faster than where it is. I guarantee the utilities will take every dime you want to give them but they will not commit or be held accountable for reliability and they will have to buy it somewhere. And the consumer is going to pay. That is my problem. That is my big problem. In my state, forget it, what are we going to do? 93% on coal? I've said this before, if a coal plant doesn't have scrubbers, spoilers, back houses for mercury, then they shouldn't be operating. That technology is available. Until we have carbon capture, and find out a way to have utilization through some type of technology that we come up with that makes it feasible, it will be very difficult. There aren't a lot of states like mine that are left are there?"

Commissioner Christie: "West Virginia has the highest percentage of coal."

"That's what I'm saying. Our transition is going to be much different. I can tell you that the transition is going to happen. People in West Virginia realize that, just don't leave us behind. We can do something. I'm trying to get the legislature in West Virginia to change the code so that we can go nuclear. I have a perfect platform for nuclear, basically where the old coal fire plant was. Transmission, everything is there. We can't even do that yet. We all have to get together."

***PRG has crafted a full summary on this hearing. Please reach out to dylan.pasiuk@bracewell.com should you wish to receive a copy.**

Document Library

Background Material

For the Congressional Research Service report on “The Senate’s ‘Byrd Rule’” click [HERE](#).

Provisional Text

For a preliminary budget reconciliation framework signed by Sen. Joe Manchin (D-WV) and Sen. Majority Leader Chuck Schumer (D-NY) on July 28 click [HERE](#).

For the House Committee on the Budget’s full text of the Build Back Better Act click [HERE](#).

For the summary of the Senate budget resolution click [HERE](#).

- For the text of the Senate budget resolution click [HERE](#).
- For the committee print to accompany the FY22 budget resolution click [HERE](#).
- For Senate Majority Leader Chuck Schumer’s (D-NY) dear colleague letter regarding the climate impacts of the budget resolution click [HERE](#).

For the summary of the House budget resolution click [HERE](#).

- For the text of House Resolution advancing the bipartisan infrastructure agreement, the Senate budget resolution, and H.R. 4 the John R. Lewis Voting Rights Advancement Act of 2021 click [HERE](#).

For a summary of Sen. Ron Wyden’s (D-OR) proposals for tighter tax rules on partnerships and an excise tax on stock buybacks click [HERE](#).

- For the text of Sen. Wyden’s proposals click [HERE](#).

Markups

Agriculture: For the text of the House Agriculture Committee print containing legislative proposals click [HERE](#).

- For a summary of the proposals click [HERE](#).

Education and Labor: For the text of the House Committee on Education & Labor print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairman Bobby Scott (D-VA) click [HERE](#).

Energy and Commerce: For a fact sheet of the House Committee on Energy and Commerce markup of the Build Back Better Act click [HERE](#).

- For a memorandum on the markup click [HERE](#).
- For Subtitle A on Air Pollution click [HERE](#).
- For Subtitle B on Hazardous Materials click [HERE](#).
- For Subtitle C on Drinking Water click [HERE](#).
- For Subtitle D on Energy click [HERE](#).
- For Subtitle E on Drug Pricing click [HERE](#).
- For Subtitle F on Affordable Care Coverage click [HERE](#).
- For Subtitle G on Medicaid click [HERE](#).

- For subtitle H on CHIP click [HERE](#).
- For subtitle I on Medicare click [HERE](#).
- For subtitle J on Public Health click [HERE](#).
- For subtitle K on Next Generation 9-1-1 click [HERE](#).
- For subtitle L on Wireless Connectivity click [HERE](#).
- For subtitle M on Distance Learning click [HERE](#).
- For subtitle N on the Manufacturing Supply Chain click [HERE](#).
- For subtitle O on FTC Privacy Enforcement click [HERE](#).
- For subtitle P on the Department of Commerce Inspector General click [HERE](#).
- For a full committee action summary click [HERE](#).

Financial Services: For the text of the House Committee on Financial Services click [HERE](#).

- For an amendment in the nature of substitute offered by Chairwoman Maxine Waters (D-CA) click [HERE](#).
- For the committee Memorandum click [HERE](#).
- For the text of H.R. 5195, the “Native American Housing Assistance and Self-Determination Reauthorization Act of 2021” click [HERE](#).
- For the text of H.R. 5196, the “Expediting Assistance to Renters and Landlords Act of 2021” click [HERE](#).

Homeland Security: For the committee print of the reconciliation of the House Homeland Security Committee print containing legislative proposals click [HERE](#).

- For the amendments adopted click [HERE](#).

Judiciary: For the text of the House Committee on the Judiciary print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairman Jerrold Nadler (D-NY) click [HERE](#).

Natural Resources: For the text of the House Natural Resources Committee print containing legislative proposals click [HERE](#).

Science, Space, and Technology: For the committee print of the House Science, Space, and Technology Committee print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairwoman Eddie Bernice Johnson (D-TX) click [HERE](#).

Small Business: For the text of the House Committee on Small Business print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairwoman Nydia Velázquez (D-NY) click [HERE](#).

Transportation and Infrastructure: For the text of the House Transportation and Infrastructure Committee print containing legislative proposals click [HERE](#).

- For the amendment in nature of a substitute click [HERE](#).

Ways and Means: For a summary of the House Ways and Means Committee markup of the Build Back Better Act click [HERE](#).

- For a memorandum on the markup click [HERE](#).

- For a section-by-section summary of subtitles A-E click [HERE](#).
 - For Subtitle A on Universal Paid Family and Medical Leave click [HERE](#).
 - For Subtitle B on Retirement click [HERE](#).
 - For Subtitle C on Child Care Access and Equity click [HERE](#).
 - For Subtitle D on Trade Adjustment Assistance click [HERE](#).
 - For Subtitle E, Part 1 on Health Careers click [HERE](#). For Part 2 on Elder Justice click [HERE](#). For Part 3 on Skilled Nursing Facilities click [HERE](#). For Part 4 on Medicare Dental, Hearing, and Vision Coverage click [HERE](#).
- For a section-by-section summary of Subtitle F-J click [HERE](#).
 - For legislative recommendations relating to infrastructure financing, green energy, social safety net, and prescription drugs click [HERE](#).
- For a section-by-section summary of Subtitle I click [HERE](#).
 - For legislative recommendations relating to Funding Our Priorities click [HERE](#).
- For the Joint Committee on Taxation’s estimated budgetary effects of legislative recommendations relating to infrastructure financing and community development, green energy, social safety net, responsibly funding our priorities, and drug pricing click [HERE](#).
- For the final vote results click [HERE](#).

Podcasts/Radio

Bracewell Policy Resolution Group Senior Principal Frank Maisano joined “Julie Mason Mornings” on SiriusXM Radio to discuss all things FERC, what is on President Joe Biden’s climate to-do list and carbon tax provisions in the budget proposal.

Listen [HERE](#).

Letters

For a letter from the Carbon Capture Coalition supporting targeted carbon management provisions featured in several bipartisan infrastructure and tax bills click [HERE](#).

For a letter for Senate Majority Leader Chuck Schumer on the environmental benefits of the infrastructure bill and reconciliation bill see [HERE](#).

For Senator Joe Manchin’s Opinion piece calling for a strategic pause on spending click [HERE](#).

For a letter from Rep. Stephanie Murphy (D-FL) and Rep. Henry Cuellar (D-TX) rejecting deficit spending except on climate policy click [HERE](#).

For a letter from Democrats calling for increased support for biofuels click [HERE](#).

For a letter from House Democrats supporting the Polluter Pays Climate Fund Act click [HERE](#).

For a letter from House Democrats supporting an array of international tax provisions see [HERE](#).

For a letter from Democratic governors supporting the budget reconciliation bill click [HERE](#).

For an endorsement of the environmental provisions from a coalition of environmental groups see [HERE](#).

For a letter from the United Mine Workers of America opposing the initial proposal for a Clean Electricity Standard click [HERE](#).

For a letter from America's Power opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from the National Rural Electric Cooperative Association opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from the American Public Power Association opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from America Electric Power opposing the Clean Electricity Performance Program click [HERE](#).

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