SULLIVAN & CROMWELL LLP

Dear friends,

As you know, President Joe Biden and a bipartisan group of 10 centrist Republican and Democratic Senators announced in the East Room of the White House on Thursday, June 24 that they had reached agreement on a $1.2 trillion infrastructure framework. That announcement came less than three months after President Biden's announcement on March 31 of a $2.3 trillion infrastructure plan, on which we sent a **flash report** that day. The bipartisan framework, short on details, omitted all the social infrastructure proposals contained in the Biden plan and made a number of other significant cuts to that plan. However, the framework retained many of the "hard" infrastructure expenditure amounts of that plan in the more traditional sectors of infrastructure, including transportation, energy, water and telecommunications.

It is difficult to compare the two plans with any specificity at this time, in light of the paucity of details of the bipartisan framework announced. Accordingly, this flash report focuses on the headline numbers in each category as compared with the Biden plan. There is also a kernel of good news for private infrastructure.

The Headline Numbers

The bipartisan framework includes several existing infrastructure programs, including the water infrastructure bill recently passed by the Senate and the surface transportation bills approved by the Senate Commerce, Science and Transportation Committee and the Senate Environment and Public Works Committee, but it also proposes $579 billion in new expenditures in the following categories, with the following approximate numbers:

- $312 billion for transportation infrastructure, comprising
  - $110 billion for roads, bridges and major projects, down from $115 billion in the Biden plan
  - $66 billion for passenger and freight rail, down from $80 billion (which was focused principally on Amtrak in the Biden plan but appears to include freight in the framework)
  - $49 billion for public transit, down from $85 billion in the Biden plan
  - $25 billion for airports, the same as in the Biden plan
  - $20 billion for an Infrastructure Financing Authority, which is proposed in the REPAIR Act jointly sponsored by Senators Mark Warner (D-VA), Roy Blunt (R-MO) and others
  - $16 billion for ports and waterways, down slightly from $17 billion in the Biden plan
  - $11 billion for "safety," in the bipartisan framework text, described as pipeline modernization, trucking safety and traffic safety in a paper released by Senator Rob Portman (R-OH) today
  - $7.5 billion for electric vehicle (EV) charging infrastructure, less than 5% of the $174 billion in EV infrastructure expenditure proposed by the Biden Administration
  - $7.5 billion for low carbon and electric buses and ferries (a figure that likely includes expenditures contained in the public transit and EV line items in the Biden plan)
- $266 billion for other infrastructure, comprising
  - $73 billion for power infrastructure, including a new grid authority (the Biden plan included $100 billion for energy infrastructure)
  - $65 billion for broadband infrastructure, down from $100 billion in the Biden plan
  - $55 billion for water infrastructure, half of the Biden plan amount
  - $47 billion for cyber and climate resiliency, down from $50 billion in the Biden plan
  - $21 billion for environmental remediation, a figure that is hard to track against the Biden plan
  - $5 billion for Western water storage, which is likely contained in the $111 billion Biden water plan

Paying for the Package – Including Some Private Sector Expenditure

The framework proposes to finance the expenditures with a range of revenue "pay fors" amounting to $584 billion. Such figures, according to the statement issued by Senator Portman, include the following:

- Most interestingly from the standpoint of the private infrastructure investment community, $100 billion from incentivizing public private partnerships, expanding private activity bonds and unlocking value from existing public-sector infrastructure to fund new infrastructure
- $100 billion in net savings from reduction of the IRS tax gap
- $80 billion from repurposing unused COVID relief funds
- $72 billion from unemployment insurance compliance efforts
- $65 billion from auctioning of additional 5G spectrum
- $58 billion from dynamic budgetary scoring
- $30 billion from allowing states to sell or purchase toll credits to raise new revenue or to meet match requirements
- $25 billion from unemployment insurance rejected by states
- $20 billion from repurposed broadband funding from previously allocated bills
- $13 billion from reinstated Superfund Fee on chemicals
- $9.2 billion from extension of mandatory sequester
- $6.1 billion from adjustment of customs user fees
- $6 billion from Strategic Petroleum Reserve sales

Prospects for Passage

Shortly after the announcement in the East Room, President Biden and Senate Democratic leadership made clear that the approval of the infrastructure framework was tied to the approval of the much larger reconciliation bill, which to date has garnered only Democratic support. President Biden threatened to veto the infrastructure framework bill if the reconciliation bill did not also come to his desk for signature. It will likely be much more difficult to earn broad Democratic support for the large reconciliation bill, since a number of Democratic Senators oppose some of the more progressive aspects of that bill, and since Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) have not committed to voting for a reconciliation bill.

Shortly after the announcement by President Biden and Senate Democratic leadership, Senate Minority Leader Mitch McConnell (R-KY), speaking on the Senate floor, implied that the framework bill faced a challenging path in the Senate. Senator Lindsay Graham (R-SC) has also announced his opposition to the extent the two bills were tied together. The Democrats control the House by a 219-211 margin, so they can afford to lose only three votes in order to pass an infrastructure bill. Of course, the Senate is evenly split, and only 10 Senators joined the group to make the announcement today, which does not bode particularly well for the prospects for the infrastructure framework becoming law.

* * * *

The announcement today marks a relatively rare instance of bipartisan effort in the U.S. Senate. Numerous commentators remarked about the obviously good spirits the Senators and the President exhibited in the press conference. It remains to be seen whether they can get some form of comprehensive, much-needed infrastructure legislation across the finish line.

We will continue to monitor developments in this area and will share details about this and other proposals as they become available.

We will be happy to discuss any aspect of the framework. We look forward to engaging with you.

Best regards,

Christopher L. Mann

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
USA
+1 212 558 4625
mannc@sullcrom.com

Learn more about S&C's Infrastructure practice

www.sullcrom.com