SULLIVAN & CROMWELL LLP

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Dear friends,

Late last night, after months of bitter political wrangling by the Biden Administration and members of both parties in Congress, the U.S. House of Representatives passed H.R. 3684, the "Infrastructure Investment and Jobs Act," also known as the Bipartisan Infrastructure Framework. The vote was 228-206, with 13 Republicans crossing party lines and six progressive Democrats defecting. The U.S. Senate had passed the bill on August 10 by a vote of 69-30, with 19 Republicans joining the 50 Democrats in the Senate to approve the bill. This can fairly be said to be the long-awaited bipartisan infrastructure legislation that the United States has so desperately needed, especially in transportation infrastructure. Following passage in the House last night, the bill has now gone to President Biden to be signed into law. Earlier today, President Biden, in a press conference at the White House, said, "Finally, infrastructure week!"

The bipartisan framework that formed the basis for this legislation omitted all the social infrastructure proposals contained in the original $2.3 trillion Biden plan announced on March 31, on which we sent a flash report that day. On June 24, President Biden and a bipartisan group of 10 centrist Republican and Democratic Senators announced that they had reached agreement on a modified $1.2 trillion infrastructure framework, containing $579 billion of new spending, which formed the core of what the House passed last night.

With that bipartisan announcement in June, the social aspects of the original Biden plan were hived off into the Build Back Better bill, but progressive Democrats in the House were insistent until the very end yesterday that the two bills had to be passed together or they would not support the bipartisan infrastructure framework, which retained many of the "hard" infrastructure expenditure amounts of the original Biden plan in the more traditional sectors of infrastructure, including transportation, energy, water and telecommunications. The Democrats hold only an eight-person margin in the House, so passage of the bipartisan infrastructure framework without the progressive caucus was an uncertain prospect. With that insistence on tying the two pieces of legislation together largely overcome last night, except for six Democrats – and with 13 Republicans joining the majority – the infrastructure bill was able to be passed, decoupled from the Build Back Better bill, which now awaits an uncertain fate in the House.

The legislation is extensive and will require close review to determine all its implications. In the meantime, this flash report focuses on the headline numbers in each category of the legislation that now awaits President Biden's signature.

The Headline Numbers

The bipartisan infrastructure 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 contains approximately $550 billion in new expenditures in the following categories, with the following approximate numbers:

- **$284 billion for transportation infrastructure**, comprising
  - $110 billion for roads, bridges and major projects, down from $115 billion in the original Biden plan
  - $66 billion for passenger and freight rail, down from $80 billion (which was focused principally on Amtrak in the Biden plan but includes freight in the final bill)
  - $39.2 billion for public transit, down from $85 billion in the Biden plan
  - $25 billion for airports, the same as in the Biden plan
  - $17.4 billion for ports and waterways, up slightly from $17 billion in the Biden plan
  - $11 billion for “safety,” consisting of pipeline modernization, trucking safety and traffic safety
  - $7.5 billion for electric vehicle charging infrastructure, less than 5% of the $174 billion in EV infrastructure expenditure proposed by the Biden Administration – the most significant departure from the original Biden proposal
  - $7.5 billion for low carbon and electric buses and ferries (a figure that includes expenditures contained in the public transit and EV line items in the Biden plan)
- **$269 billion for other infrastructure**, including
  - $73 billion for power infrastructure, including a new grid authority (the original 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
  - $50 billion for cyber and climate resiliency, the same as in the Biden plan
  - $21 billion for environmental remediation
  - $5 billion for Western water storage, which was contained in the $111 billion Biden water plan

The Congressional Budget Office has estimated that the legislation will add $256 billion to the federal deficit over a 10-year period.

Implications for Private Investment

For the private-sector strategic and financial investors who for many years have hoped for comprehensive infrastructure legislation that would have material incentives for advancing private-sector investment in brownfield and greenfield infrastructure, the infrastructure bill will likely prove to be a disappointment, based on our preliminary review. We have identified none of the key innovations advocated over the years by the private sector and those who advise that sector as being included in the legislation. Missing are any changes to the tax code that would encourage greater private-sector investment in traditionally public-sector infrastructure (for example allowing tax-exempt financing to remain in place despite a change in control to the private sector of assets funded by that debt, or extending REIT treatment to infrastructure assets, or repealing FIRPTA), or any changes to the Airport Privatization Pilot Program to facilitate private-sector investment to modernize our aging airports, or any incentives for public-private partnerships. This is not to say that any of these reforms could not be pursued at a later date – for example all the tax reforms would be more suitably contained in a tax bill – but for now it seems apparent that attracting private-sector investment was not a key priority.

Nevertheless, there is plenty in the big numbers for the private sector to be encouraged about. Infrastructure-adjacent businesses, including construction, building-material, logistics and technology businesses, will have many opportunities to benefit from the large government contracts that will be needed to achieve all this capital expenditure. Labor unions were very pleased by the passage of the bill, which will no doubt require significant short-term – at least – increases in demand for labor provided by the construction trades and other related trades. The United Steelworkers tweeted this morning, “This is a big freakin’ deal for us…!”

In short, this magnitude – over a half trillion dollars – of incremental infrastructure spending is bound to result in significant opportunities for the private sector and, in the long run, enhanced U.S. infrastructure. Delivery, however, will be key. It has been reported that of the $800 billion provided by the American Recovery and Reinvestment Act of 2009, less than $100 billion was allocated to transportation and infrastructure, and less than $30 billion of that was actually spent. It remains to be seen whether – in light of the significant supply chain, logistics and labor market challenges that businesses are facing worldwide – these spending figures can actually be implemented to build better infrastructure for the United States.

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We are continuing to review the legislation, and we look forward to engaging with you on how the private sector may do its part, in the context of all this new spending, to help create a path to put U.S. infrastructure on a 21st-century footing.

Best regards,

Christopher L. Mann

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

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www.sullcrom.com