

## Rebuilding Bridges: General Information for All Interested Parties

For decades, Republicans and Democrats have agreed that America's ailing infrastructure needs fixing. Despite this consensus, Congress has failed time and time again to authorize a major overhaul of the nation's failing highways, interstates, bridges, and airports. Last year, the American Society of Civil Engineers gave the U.S. a "D+" grade for its infrastructure, highlighting crumbling roads and bridges and subpar aviation and public transit systems. Despite these terrible marks *and* even in light of the current Administration's commitment to passing a large infrastructure bill, it has been like "gridlock as usual" in Washington, DC.

Then, two months ago, a large bridge connecting the River Cities in eastern Illinois with western Indiana on Interstate-80 collapsed – killing over 60 people and injuring over 100 more. The collapse has shocked the country, receiving wall-to-wall news coverage highlighting both this specific tragedy and prompting national outrage that Congress has let America's basic infrastructure decay to this level.

### The Bolstering U.S. Infrastructure and Local Development Act

Shortly after the collapse, the White House and Congressional leadership from both parties announced that they would work to pass the much-needed reauthorization of major infrastructure programs and provide funding for repairs. The outline of the package they described was nothing short of sweeping – the US has not seen infrastructure investment on this level since Eisenhower established the interstate highway system in the 1950s. The Senate agreed to take the first stab at drafting a bill.

In the months since the collapse, the Senate Committee on Finance and the Committee on Environment and Public Works drafted and marked-up their portions of the legislation (taxes and infrastructure policy, respectively) with record speed. The resultant bills were voted out of both committee unanimously. For the past few weeks, the Senate Majority Leader, Senator Alston Howell, and the Senate Minority Leader, Senator Yvette Robinson, have been working to merge the two bills into the *Bolstering U.S. Infrastructure and Local Development (BUILD) Act*, a single bill that incorporates both committees' work into a Manager's Amendment to bring to the Senate floor.

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While certain contours of *The BUILD Act* have been fully settled, there were discrepancies between the two bills around the issues of offsets, the gas tax, and the implementation timelines. Beyond this, while there has been broad discussion of the issue, the regulation of automated vehicles (AVs) was not included in either committees' reported out version of the bill.

Experts estimate that a comprehensive repair would cost \$4.6 trillion. The White House's most recent budget included a \$1 trillion infrastructure proposal, which was received as a good start but generally viewed as insufficient to make a dent in the problem.

## The Parties

Leadership across Washington is excited about the prospect of a passing a large, bipartisan bill to revitalize investment in American infrastructure. The legislation will create thousands of solid, working-class jobs across the entire country and will deliver much-needed repairs that will help create safer travel and a more stable environment for businesses that utilize public roads, bridges, ports, and air transit in their operations.

While the Majority and Minority leaders are leading the work to develop the Manager's Amendment for the *BUILD Act*, there are four other stakeholders with strong interests in the outcome of the legislation and Senate floor debate. The six parties are described briefly below:

**Senator Alston Howell, Senate Majority Leader (R-IA):** Sen. Howell is a veteran Senator from Iowa and is currently two years into his fifth term. He was elected Majority Leader when his party took over the Senate six years ago, but has yet to achieve any major bipartisan legislative deals during his tenure in the role. As such, he deeply wants this bill to pass and quickly. Additionally, there was a recent AV crash that killed a pedestrian in his home state, leading local leaders to push for the industry to be regulated. While he has not publicly stated a formal position, the word on K Street is that Sen. Howell might support adding federal oversight of AVs to the bill.

**Senator Yvette Robinson, Senate Minority Leader (D-OR):** Sen. Robinson is a senior Senator from Oregon, currently finishing her fourth term. She has been the leader of her caucus for the past four years, stepping up when the previous Leader retired. At risk of being viewed as the party of "no" against a Senate Majority and White House lead by the other party, Sen. Robinson supports the legislation both on merit and as evidence of her party's bipartisanship and willingness to govern. She will need to be sure that the final bill she agrees to provides enough long-term funding and satisfies enough Democratic stakeholders, i.e.: labor, that it can pass the House of Representatives, which is controlled by her party.

**Yohannes Carter, The White House:** During his quest for the White House, the President (Republican) campaigned nonstop on fixing America's failing infrastructure – but almost two years have passed with little to no action from the Administration beyond a vague budget proposal. The bridge collapse reignited pressure to act, and the President has publicly stated he will personally ensure that this legislation is signed into law. The President will be represented in these talks by Yohannes Carter, Special Assistant to the President for Legislative Affairs and Director of the White House Office of Legislative Affairs.

**Senator Deb Brooks (R-AR):** A strong fiscal conservative from the Arkansas, Sen. Brooks is in the middle of her second term in the Senate. A businesswoman by background, Sen. Brooks understands the urgency in repairing roads and bridges but is highly concerned that America will spend itself into a debt crisis if a *BUILD Act* passes that is not fully offset and does not include funding formulas appropriate to different states. Additionally, she has mentioned concern that ramping regulation in some areas of infrastructure, especially AVs, will hamper future innovation and reduce the effectiveness of the federal funds. She serves on the Senate Finance Committee.

**Senator David Martinez (D-NJ):** A progressive junior Senator from New Jersey, Sen. Martinez has been heralded as a major presidential contender and is a national voice on important progressive causes. He has been broadly supportive of the legislation, but wants to ensure that the gas tax is permanently raised to avoid this level of disrepair in the future. He's been vocal about incorporating union labor and environmental standards into the final bill. Finally, at the unusually young age of 42, he is also viewed as a bridge between Silicon Valley and Washington.

**Ian George, President, The Automated Vehicles Innovation Association (AVIA):** AVIA was formed in late 2015 by a myriad of stakeholders who are involved in developing driverless cars. Ranging from major tech companies who are piloting AVs across the country to all three traditional American automobile manufacturers and both major ridesharing companies, the coalition is a veritable "who's who" of powerhouse companies across both the automobile and technology sectors. The President of AVIA will represent the industry at these talks.

## The Unanimous Consent Agreement

After a few weeks of work merging the two bills that came out of committee, Sen. Howell asked his staff to run a preliminary hotline on his party's side, and asked Sen. Robinson to do the same. He was aware that the Manager's Amendment might need some tweaks, but both he and Sen. Robinson were surprised when a series of concerns about spending and the regulation (or lack thereof) for AVs surfaced from their respective caucuses. They had expected little difficulty in negotiating an agreement around the package and the time agreement for bringing it to the floor.

Sen. Howell had hoped to bring the *BUILD Act* to the floor under a Unanimous Consent (UC) agreement. A UC agreement would allow Sen. Howell to bring the bill to the floor with specific, previously agreed upon limitations around its debate, including the number and nature of amendments, time spent debating each amendment, and time spent debating the entire bill. The UC process would help Sen. Howell better manage the floor debate and save time. However, any Senator can object and block the UC agreement, but they cannot block final passage of the legislation without 40 additional votes.

If a Senator does object to the UC agreement, Sen. Howell can still move the *BUILD Act*, but he must file a series of procedural votes that will burn through almost a full week of Senate floor time before getting to the actual bill, and then abide by the Senate standing rules to debate the legislation. Sen. Howell has invited the other five parties to a meeting to work through the following issues and gain consensus around a UC Agreement that will avoid this significant time delay. However, the Majority Leader needs

the support of only four of the other parties to ensure that the bill can clear the vote threshold for cloture and Motion to Proceed.

There are several coalitions large enough within the chamber who can exercise “veto” power by refusing to vote for cloture if they unite – namely, those concerned about the federal deficit and those concerned about the regulation of AVs. Additionally, AVIA has a series of influential Senators in their corner and can likely swing those votes. **Thus, any two parties, together, can exercise veto power over the *BUILD Act* by preventing Sen. Howell from having enough votes to get to 60 on cloture.**

Additionally, the White House Legislative Director can unilaterally veto any version of the bill as a proxy for the President’s veto power. The Senate Minority Leader can also unilaterally veto any version of the bill, as it will need Democratic votes to pass.

## The Issues

*The BUILD Act* makes sweeping updates to all elements of American infrastructure – planes, trains, automobiles, and more. While the two committees agreed broadly around the new authorities, grant programs, and specific areas that require increased funding, they did not reach a consensus around paying for those improvements or the time horizon for the *BUILD Act*’s implementation by the Department of Transportation (DOT). These remaining issues need to be finalized and incorporated in the Manager’s Amendment.

Additionally, the parties need to agree to the parameters of a Unanimous Consent agreement that will prescribe the time and specific amendments that will be voted upon during the Senate’s floor consideration of *The BUILD Act*.

## Issue #1: Funding and Offsets

As with any legislation, agreeing on policy is often less easy than agreeing on how to pay for it. The two bills that were voted out of committee only addressed the policy side of the equation – they did not include offsets, which are more sensitive to negotiate and often cross committee jurisdictions. Experts estimate that a comprehensive investment to repair all infrastructure will cost \$4.6 trillion and the Congressional Budget Office (CBO) has scored the combined two committee bills at roughly \$3 trillion.

Sen. Robinson and the White House are concerned that a less comprehensive *BUILD Act* will be received as more of an empty gesture than a real response, but they are also conscious of driving up the debt.

- a) Under \$1 trillion, fully offset: This option would require significant scaling back of the authorizing policy in the bill.
- b) \$3 trillion mixed spending, fully offset: This option contains tax credits and budgetary spending. It fully funds the legislation through a mix of taxes and other savings.
- c) \$1.5 trillion in mixed spending, partially offset: option contains tax credits and budgetary spending. It would slightly reduce the authorizations in the bill but would increase the deficit.

- d) \$2 trillion in budgetary spending, not offset: The authorizing elements of the legislation would remain intact, but the federal deficit would increase by almost 25 percent.
- e) \$3 trillion in mixed spending, partially offset: This option contains tax credits and budgetary spending. It fully funds the legislation through a mix of taxes and other savings.

## Issue #2: Regulation of Automated Vehicles

For years, technology and motor companies have been working on developing driverless cars (unmanned autonomous vehicle, or UAVs). These AVs have the potential to remake the economy. However, a recent incident in Iowa where an AV killed a pedestrian raised concerns that they are not being regulated and may not be safe.

The crash has fanned speculation that the *BUILD Act* might establish a federal standard for regulation of AVs. AVIA has been fiercely fighting this regulation, claiming that any federal regulation would significantly impede innovation in the space.

- a) Pre-market regulatory approval: This would require the National Highway Traffic Safety Administration (NHTSA) to approve AVs as safe before they are allowed to be tested and sold for use by the public.
- b) Hybrid certification and pre-market approval: This would tier the levels of approval required for different AVs – passenger cars would require pre-market approval and UAVs would simply need to submit data certifying safety standards have been met.
- c) Certification only: Requires only certification that safety standards have been met for all AVs.
- d) No language on AVs: The bill would remain silent on the issue of AV regulation.

## Issue #3: Gas Tax

The DOT's upkeep of American transportation infrastructure is largely funded by the gas tax, which is currently at \$0.184 per gallon for gas and \$0.244 per gallon for diesel. It was last updated in 1993 and is not indexed to inflation. As such, the tax currently brings in about \$34 billion, while annual costs have soared to \$50 billion in the last twenty years – meaning the tax has lost about 40 percent of its value. This would be a permanent, simple way to prevent America's infrastructure from falling into disrepair in the future, but it is costly.

Sen. Howell has voiced opposition to raising a tax that affects so many middle-class families and small businesses, but Sen. Martinez is convinced that raising the gas tax now is the only way to ensure that DOT can maintain the investments in the *BUILD Act*. Without raising it, America's infrastructure will end up in disrepair again in thirty years.

- a) No changes: The bill does not alter the gas tax. DOT would continue to run a deficit in repairing roads, bridges, and other infrastructure in the future.
- b) Index to inflation: In the short term, this would not raise much revenue. Over the budget window, this option would generate nearly \$30 billion in revenue for DOT repairs.
- c) Raise to \$0.45/gal: This would generate \$840 billion in revenue for DOT over the next ten years.

- d) Raise to \$0.45/gal and index to inflation: This would generate nearly \$1 trillion in revenues for DOT over the next ten years.

#### **Issue #4: Implementation Timelines**

The White House insists that the statutory deadlines for the implementation of the *BUILD Act* be two years from date of enactment. The scope of the legislation and the significant amount of funding it will need to grant, contract, and distribute to states will require additional staff, who will also take time to hire. However, Senator Robinson, eager to get these funds flowing to communities, insists on a phased-in approach.

- a) 180 days
- b) 1 year
- c) Phase-in: This option would set all funding distribution deadlines for 180 days after enactment, but give the Administration a longer 18-24 month window on standing up new policy programs and issuing regulations.
- d) 2 years

#### **Issue #5: Amendments and Time Agreement**

As with any UC agreement, the Senate Majority Leader and Minority Leader need to come to agreement around the constraints on debate time and amendments that will be locked into the structure of the floor consideration of the *BUILD Act*. Both would prefer no amendments, to reduce both the likelihood that political floor fights on amendments will harm the bill's chance of passage and the amount of time spent debating the bill. However, Sens. Martinez and Brooks both have a series of amendments they believe at least deserve a vote. Each amendment will receive one hour of floor debate. The AFL-CIO has been particularly vocal in pushing for an amendment requiring union labor quotas in the construction projects that will be funded by the *BUILD Act*.

- a) No amendments: There will be four hours of floor debate for each side, for a total of eight hours of consideration before vote on cloture and final passage.
- b) 1 amendment per side: Majority amendment on funding formulas that account for toll roads; Minority amendment requiring union labor for construction projects.
- c) 3 amendments per side: Majority amendments on funding formulas that account for toll roads, private sector contract quotas, and block granting some funds to states; Minority amendments requiring union labor and environmental standards for construction projects, and workforce training funding for those displaced by AV.

### **The Negotiation**

The Majority Leader's staff sent around a proposed agreement on the issues above in advance of this discussion. The current offer includes:

- \$3 trillion in spending, partially offset
- Pre-market approval for AVs
- No change to the gas tax
- No amendments

- 2 year implementation timeline

The Majority Leader's staff holds the pen on the legislation, and he controls the floor proceedings for the Chamber. Sen. Howell has invited the parties to join him in his Capitol office to get the conversation moving. His stated objective for the meeting is to seek a negotiated agreement among all the parties to ensure the swift passage of the *BUILD Act*. He would strongly prefer to avoid burning the requisite 30 hours on cloture for a Motion to Proceed (MTP) and then be restrained by the Senate standing rules to debate the legislation.

He hopes that they can agree to a Unanimous Agreement that will help the legislation move quickly through the Senate. However, the Majority Leader needs the support of only four of the other parties to ensure that the bill can clear the vote threshold for cloture and MTP. Any agreement must obtain the consent of the White House Legislative Director (as a proxy for the President and his veto power) and the Senate Minority Leader, whose caucus is generally disciplined and could collectively block the bill from coming to the floor.

### **Mechanics of the Negotiation**

All parties have agreed to attend the meeting. Each party has seen a copy of the Majority Leader's current proposal.

The discussion may progress in any direction, but the Majority Leader will be searching for a proposal that will win enough votes to clear the Senate floor and obtain the President's signature. Anyone can suggest an alternative proposal and request a vote.

Although all parties have agreed to attend the meeting, they need not meet as a group throughout the full negotiating session. Parties can opt to walk away from the discussion if they so desire. In addition, they are free to meet privately in smaller groups at any time. However, no more than two parties may meet privately at the same time. The rest of the parties may continue negotiating while those two parties meet privately.

Once a proposal is passed, the votes are binding and the parties cannot renege their promise of the support. To be binding, a vote must be on a "package" which addresses all five of the issues. The parties remain free, however, to explore "improvements" in the agreement. But proposed improvements must be supported by all the parties to the original agreement, otherwise the original agreement stands.

Negotiations must stop at the end of the session. If no agreement is reached, the bill will not be signed into law before the upcoming recess in advance of the midterm elections.

## Glossary

**AMENDMENT:** A proposal to alter the text of a pending bill or other measure by striking out some of it, by inserting new language, or both. Before an amendment becomes part of the measure, the Senate must agree to it.

**CLOTURE:** The only procedure by which the Senate can vote to place a time limit on consideration of a bill or other matter, and thereby overcome a filibuster. Under the cloture rule (Rule XXII), the Senate may limit consideration of a pending matter to 30 additional hours, but only by vote of three-fifths of the full Senate, normally 60 votes.

**FILIBUSTER:** A process intended to block or delay legislation or any other matter by irregular or obstructive tactics, especially by making long speeches.

**HOTLINE:** Process by which the leadership of each party runs an informal temperature check with their Senators about a piece of legislation or action that is being considered for a faster-track consideration on the Senate floor.

**MANAGER'S AMENDMENT:** An amendment that is introduced at the beginning of a new stage of bill consideration that would strike out the entire text of a bill or other measure and insert a different full text.

**MARKUP:** The process by which congressional committees and subcommittees debate, amend, and rewrite proposed legislation.

**MOTION TO PROCEED:** A motion, usually offered by the majority leader to bring a bill or other measure up for consideration. The usual way of bringing a measure to the floor when unanimous consent to do so cannot be obtained. For legislative business, the motion is debatable under most circumstances, and therefore may be subject to filibuster.

**UNANIMOUS CONSENT:** A senator may request unanimous consent on the floor to set aside a specified rule of procedure so as to expedite proceedings. If no Senator objects, the Senate permits the action, but if any one senator objects, the request is rejected. Unanimous consent (UC) requests with only immediate effects are routinely granted, but ones affecting the floor schedule, the conditions of considering a bill or other business, or the rights of other senators, are normally not offered, or a floor leader will object to it, until all senators concerned have had an opportunity to inform the leaders that they find it acceptable.

**UNANIMOUS CONSENT AGREEMENT:** A unanimous consent request setting terms for the consideration of a specified bill or other measure. These agreements are usually proposed by the majority leader or floor manager of the measure, and reflect negotiations among senators interested in the measure. Many are "time agreements," which limit the time available for debate and specify who will control that time. Many also permit only a list of specified amendments, or require amendments to be to the measure. Many also contain other provisions, such as empowering the majority leader to call up the measure at will or specifying when consideration will begin or end.



## Mechanics

### Agreeing to a Deal

- A party may not agree to a deal below his or her minimum number of points required.
- In order for a deal to be signed, it must have the support of the Majority Leader Howell, Minority Leader Robinson, the WHLA Director Mr. Carter, and at least two other parties.
  - In effect, Senator Howell, Senator Robinson, and Mr. Carter all have *de facto* veto power.
  - For a deal to be passed, at least two of the remaining parties must agree to the deal.

### Side-Bar Conversations

- Any two parties may leave the full table negotiation to have a sidebar conversation at any time.
- However, only two parties may be away from the table at any time – multiple sidebar conversations cannot be happening simultaneously.

### Final Results Form

- Majority Leader Howell has a results form that must be turned in by the negotiation deadline.
- Any parties agreeing to the final deal must sign the results form.