

Rebuilding Bridges: Senator Deb Brooks (R-AR)

TO: Senator Deb Brooks

FROM: Maria Alvarez, Chief of Staff and Adam Conway, Legislative Director

RE: Final Negotiation on The *BUILD Act*

We believe the *BUILD Act* presents a critical decision point for you to step up and firmly establish your leadership on issues of taxation and deficit spending in the Senate. While we recommended that you vote for the *BUILD Act* in the Finance Committee, we made clear that your position might change once the offsets were added to the package.

With the offsets now on the table, the benefits of this bill becoming law are not entirely clear. We all admit that the River Cities bridge collapse was tragic and that our infrastructure needs repair, but the proposal that the Majority Leader has put on the table is utterly irresponsible. He wants to fund a \$3 trillion bill without paying for all of it – a move that would increase the national debt by nearly 25 percent. This feels more like a return to earmarks than a responsible solution to our infrastructure needs.

You have been vocal about your concern for America's spending habits – everything from runaway entitlement spending to spending tomorrow's money today to enact new policies. We do not need to explain to you, but one of the chief concerns about this continued deficit spending is the serious national security exposure that it creates. Other countries hold a disproportionate amount of US national debt, giving foreign powers an unacceptable amount of control over us should they choose to exercise it.

Based on our conversations with their staffs, we know that Sen. Howell, Sen. Robinson, and the White House are all eager to get a bill to the President's desk. We believe this provides an opportunity for you to shore up the irresponsible spending in the bill – after all, some response is better than no response at all. And we cannot let every disaster or tragedy bankrupt the Treasury.

There is a strong coalition of about 23 GOP Senators that you have held a series of meetings with on this topic. As you will recall, at the last meeting there was unanimous agreement that the group would stick together in opposing any legislation that was not fully paid for moving forward. Sen. Howell's staff may

This Confidential Instruction was written by Brian Mandell, Senior Lecturer in Negotiation and Public Policy, Monica Giannone, Director of the Harvard Kennedy School Negotiation Project, and Emily Schlichting at the John F. Kennedy School of Government, Harvard University (HKS) as part of the Harvard Kennedy School's "Teaching Legislative Negotiation Project." Funding for this simulation was provided by The William and Flora Hewlett Foundation. HKS simulations are developed solely as the basis for class discussion. They are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

Copyright © 2019 President and Fellows of Harvard College.



This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/3.0/>; or, (b) send a letter to Creative Commons, 171 2nd Street, Suite 300, San Francisco, California, 94105, USA.

have an inkling that we have been coordinating this group of Senators, but we have not formally confirmed your control over this block of votes to him.

Scoring. In order to help with your negotiating strategy, we have constructed a 110 point scoring scheme to illustrate which negotiable issues are of greatest and least importance to you. We have weighted these based on political considerations, your previous voting record, and constituent interests. Under this scheme, you can score up to 110 points during the negotiation, depending on how each of the five issues is resolved. Your most preferred version of the bill is scored at 110 points.

Dealing with these issues in terms of “points” may seem artificial and abstract but for the purposes of this negotiation, it will enable you to combine your interests – blocking any deficit spending, not raising taxes, and securing votes for critical amendments on the floor – into a single index. You will be able to compare the gains and losses of different options under each issue more easily.

In addition, the point system allows you to compare the value of the negotiated agreements to your alternatives. We believe you should only agree to support this bill if you can secure an agreement worth **at least 65 points**. Any agreement worth fewer than 65 points would not be worth pursuing. You (and the country) would be better off without any bill than with one that continues to spend us into a national fiscal and security crisis. That said, a bill that is fully paid for and does not raise many taxes would significantly improve your national political clout.

Your task is to ensure that the *BUILD Act* only gets through the Senate if your priorities are accounted for, while minimizing political compromises required to do so. Try to earn as many points as possible in this negotiation. A better bill only strengthens your position going into future legislative negotiations.

Note: We believe you can negotiate an agreement that scores much better than 65 points. An agreement worth 80 points would set you up nicely for the tax extenders negotiation that will happen after the midterm elections and further contribute to your reputation as a strong negotiator.

While you could technically refuse to agree to a Unanimous Consent (UC) Agreement reached here today, we know the Leader would simply call a vote and fill the tree with amendments that do not account for your interests. Additionally, we fear you would be viewed as obstructionist and lacking empathy for those affected by the tragedy if you do so alone. And you would damage your relationship with the Majority Leader. Therefore, you should, under no circumstances unilaterally threaten to stop the *BUILD Act* by blocking the Majority Leader’s motion for UC. However, if you could find another coalition of 18 Senators, you could combine forces and withhold the requisite 40 votes to block a cloture or Motion to Proceed (MTP) vote while maintaining political cover.

Issue #1: Funding and Offsets

As you know, many experts estimate that a comprehensive investment to repair all infrastructure will cost \$4.6 trillion. CBO scored the current package of both committee bills at \$3 trillion. This is an unacceptable level of spending. Ideally, you will be able to negotiate the funding down to under \$1 trillion. While this will mean a more scaled back version of the *BUILD Act*, it accepts the stark reality that governing is about making hard choices. The money faucet cannot stay on forever.

However, we advise that you support **any** package that is fully paid for, regardless of the amount of spending it contains. This means that, if necessary, you could support the higher spending version of the *BUILD Act* if it is fully offset. In fact, supporting a larger offset package would allow you to maintain your reputation as a hardline negotiator on the deficit but diminish criticism about a muted response to a national tragedy.

As you can see, this issue is the **most important for you** in this negotiation. Failure to secure one of the first two options likely means the deal will not serve your interests.

- a) Under \$1 trillion, fully offset = 70 points
- b) \$3 trillion mixed spending, fully offset = 45 points
- c) \$1.5 trillion in mixed spending, partially offset = 25 points
- d) \$2 trillion in budgetary spending, not offset = 10 points
- e) \$3 trillion in mixed spending, partially offset = 0 points

Issue #2: Regulation of Automated Vehicles

For years, technology and motor companies have been working on developing driverless cars. You know these AVs have the potential to remake the economy. You suspect the recent AV collision that killed a pedestrian in Des Moines has put Sen. Howell in a very difficult position.

Initial backlash called on the White House to regulate AVs from the National Highway Traffic Safety Administration (NHTSA). The White House claims it does not have the legislative authority, which has shifted the pressure to Congress. While you do not really support regulation of AVs in principle, we have bigger fights to protect the deficit at hand in the *BUILD Act*. Given this, we have not built in any scoring on this issue.

Issue #3: Gas Tax

As we noted above, you generally do not support raising taxes. However, if the gas tax could help reduce the amount of deficit spending in this bill, it could be a good thing. We do not have a strong recommendation about where you should position yourself on this issue – instead, we suggest seeing how the discussions play out. Offering your support one way or another could be helpful in achieving one of your more critical objectives. Given this, we have not built in any scoring on this issue.

Issue #4: Implementation Timelines

We are not entirely sure why the Majority Leader has included this issue in the debate – at markup it seemed as though everyone was fine with a two year timeline. This was due largely to the White House's insistence that the statutory deadlines for the implementation of the *BUILD Act* be two years from date of enactment. While we believe two years to be the best policy choice, one year is also an acceptable outcome.

- a) 180 days = 0 points
- b) 1 year = 15 points
- c) Phase in = 10 points
- d) 2 years = 20 points

Issue #5: Amendments and Time Agreement

We strongly recommend you push for a UC Agreement that includes three amendments for each side. Leader Howell's staff knows that you will be pushing for these votes – we reminded them that they were promised to you in exchange for not pushing them hard during the Finance Committee markup of the *BUILD Act*.

Securing this vote is critical for a few reasons. First, your home state has never utilized toll roads. You have long supported this – roads are a public good! You have never supported charging folks additional taxes just to use the roads they have already paid for. As a result, Arkansas roads are in a far worse state of disrepair than those of other states that have utilized tolls over the years. Because of this obvious discrepancy, it is only fair that the Senate at least vote on your proposal to more effectively distribute highway repairs funds across states.

The other two amendments are less important, but given the number of concessions you agreed to during the Finance Committee markup of this bill we believe it is perfectly acceptable that you be granted votes on the amendments to ensure good private sector jobs for these projects and to grant some of the funds to states for their own discretionary use.

- a) No amendments = 0 points
- b) 1 amendment per side = 15 points
- c) 3 amendments per side = 20 points

A one-page scoring sheet has been attached which summarizes the points we have assigned to each one of the five issues. This information is CONFIDENTIAL! You should not show your scoring sheet to anyone! You may convey some or all of the scoring information verbally to a mediator, or to any other party, but you should not let anyone see your scoring sheet.

Good luck.

CONFIDENTIAL TO SENATOR DEB BROOKS (R-AR)
POINT SUMMARY AND WORKSHEET

Issue Option	Points	First Vote	Second Vote
<u>Funding</u>			
1. Under \$1 trillion, fully offset	70		
2. \$3 trillion mixed spending, fully offset	45		
3. \$1.5 trillion in mixed spending, partially offset	25		
4. \$2 trillion in budgetary spending, not offset	10		
5. \$3 trillion in mixed spending, partially offset	0		
<u>AV regulation</u>			
1. Pre-market regulatory approval	--		
2. Hybrid certification and pre-market approval	--		
3. Certification only	--		
4. No language on AVs	--		
<u>Gas Tax</u>			
1. No changes	--		
2. Index to inflation	--		
3. Raise to \$0.45/gal	--		
4. Raise to \$0.45/gal and index to inflation	--		
<u>Implementation</u>			
1. 180 days	0		
2. 1 year	15		
3. Phase in	10		
4. 2 years	20		
<u>Time and Amendments</u>			
1. No amendments	0		
2. 1 amendment per side	15		
3. 3 amendments per side	20		

Minimum needed for an agreement = 65 points.

This is your score if the negotiations fail and no agreement is reached.