NAM Summary of Key Provisions in the Build Back Better Act (H.R. 5376)

(As considered in the House on Nov. 5, 2021)

On Thursday, Oct. 28, President Biden announced a negotiated framework for the Build Back Better Act (the budget reconciliation bill), including the tax increases designed to pay for the package. Thanks to sustained advocacy by the NAM and our members, the agreement differs in several key aspects from the initial House version released in September. Most notably, the proposal does not include increases in either the corporate tax rate or the top individual income tax rate.

This document summarizes key provisions important to manufacturers contained in this more than 2,000-page bill.

Revenue

- According to the White House, the revenue provisions in the BBB would increase taxes by more than $1 trillion. The changes under consideration would impact corporations, businesses with international operations and pass-throughs.

- **Corporate:** No changes to the corporate tax rate, but significant tax changes affecting manufacturers.
  - New 15% corporate alternative minimum tax in the form of a tax on financial statement income that applies to large corporations ("book tax").
  - New limitation on the ability to deduct interest on business loans.
  - New excise tax on stock buybacks.
  - Delay in effective date for R&D amortization.

- **International:** Changes to a variety of provisions affecting globally engaged manufacturers.
  - GILTI (global minimum tax): higher tax rate, more complex calculation, more foreign income subject to the tax.
  - FDII (tax incentive for U.S. IP): reduced benefit.
  - BEAT (minimum tax targeting related party payments): higher tax burden.

- **Pass-Throughs:** Preserves current law for the pass-through deduction and for individual and capital gains tax rates, but pass-through businesses paying tax at the individual rate will face several new surtaxes.
  - 3.8% net investment income tax applied to business income greater than $400,000 (single)/$500,000 (married).
  - New 5% surtax on individuals with adjusted gross incomes over $10 million, plus an additional 3% surtax on adjusted gross incomes over $25 million.
  - Increases the deduction for state and local taxes to $40,000(single)/$80,000 (married) through 2030.

- **Superfund Tax:** Reinstates, doubles and provides for additional tax increases on basic commodities such as minerals, oil and chemicals used as building blocks for everyday goods.

- **Methane Tax:** Assess a $1,500 fee per ton of methane emissions by 2025.

- Penalty is assessed regardless of whether an operator meets new or existing methane regulations.
- The EPA is instructed to continue to tighten the standard and increase the cost of the penalty.

Climate and Environment

- **Climate Tax Incentives:** Offers more than $320 billion in renewable energy, energy efficiency, biofuels, carbon capture and other advanced energy tax incentives. However, most extensions and credits include rigorous new requirements to access full incentives.
  - **Renewables Production Tax Credit (PTC):** cut by 80%; from 2.5 cents down to 0.5 cents/kwh and **Investment Tax Credit (ITC)** cut by 80%; from 30% down to 6%, unless new prevailing wage, apprenticeship and content requirements are met.
  - **45Q:** cut to $12 per ton for carbon capture, utilization and storage, $17 per ton for sequestration and $26 to $36 for direct air capture. If additional requirements are met, a bonus rate is available.
  - **Nuclear PTC:** Provides up to 1.8 cents/kwh for carbon-free electricity.
  - **Fuels:** Extension, expansion and creation of biofuel, alternative, clean fuel and sustainable aviation fuel credits up to $1.75 a gallon.
  - **Clean hydrogen:** PTC at a base rate of $0.6 per/kg, with potential of $3.00 per/kg if prevailing wage, apprenticeship and life-cycle carbon requirements are met.
  - **Special Provisions:** Certain renewable incentives allow taxpayers make a one-time irrevocable election to treat the credit as a tax payment, rather than carry forward. Content provisions apply at 100%.

- **Greenhouse Gas Reduction Fund:** $29 billion for nonprofit, state and local climate finance institutions that support the rapid deployment of low- and zero-emission technologies, including zero-emission vehicle supply equipment.
  - Financing entities will leverage public and private investment to help communities reduce or avoid greenhouse gas emissions and other forms of air pollution.
  - At least 40% of investment in low-income and disadvantaged communities.

- **Agriculture:** Provisions include investments to promote sustainable agriculture, including:
  - $47 billion to modernize rural energy and water systems, promote biofuels, agricultural innovation and climate research.

- **EPA Grants:** Invests $5 billion through the EPA for states, municipalities and Indian tribes to develop and implement plans to reduce climate pollution.
  - $250 million for the EPA to make grants to states or localities to create climate plans.
  - The EPA will then award $4.75 billion to implement the plans to reduce climate pollution.

- **Climate Research and Resilience:**
  - $5 billion for more in-depth environmental reviews, climate resilience, species protection and withdrawals of federal lands.
  - $4 billion for EPA, NASA and NOAA research, forecasting, adaptation and resilience.
  - $2 billion for water resources and critical infrastructure research, resilience, reuse and drought response programs.

- $9.3 billion for climate resilience and adaptation in tribal, Hawaiian, coastal communities and fisheries.

- **<u>Environmental Justice and Green Jobs:</u>**
  - $3 billion block grant program provides direct funding to the communities most impacted by climate change and environmental injustice (EJ).
  - $9 billion in EPA programs for replacement of lead service lines and reduction of lead in drinking water systems throughout the country.
  - $7 billion for lead paint removal and energy efficiency in federally assisted housing.
  - $19.5 billion for community service and climate workforce programs.
  - $10 billion for EJ tax credits for institutions of higher learning. 10% bonus tax credit is available for a limited amount of qualified low-income renewable energy installations.

- **<u>Ports and Waters:</u>**
  - $3.5 billion to reduce air pollution at ports and in the communities that surround them.
  - Grants will support the purchase and installation of zero-emission equipment and technology, as well as the development of climate action plans at ports.
  - At least 25% of investments will be made at ports in nonattainment areas.
  - $8.5 billion to support climate-resilient port infrastructure, environmental remediation and wastewater infrastructure.

Energy Policy

- **<u>Federal Lands:</u>**
  - Imposes additional lease fees, rental rate hikes, inspection fees, costly bonding requirements, severance fees, royalty increases, idling fees, pipeline fees and other taxes.
  - Permanently bans Americans from accessing mineral resources off the Atlantic, Pacific, Eastern Gulf, Alaskan and other yet to be determined areas.

- **<u>Electric and Clean Vehicles:</u>** Promotes zero emissions vehicles.
  - $20 billion to promote zero- and low-emissions transportation, electric vehicle charging, hydrogen fueling and sustainable communities.
  - Individual, commercial and fleet electric and alternative vehicle tax incentives.
  - $5 billion in replacing heavy-duty vehicles and school buses, with zero-emission vehicles through a new grant program at the EPA.
  - $15 billion in multiple loan and grant programs at the DOE to support development of innovative technologies and American manufacturing of zero-emission transportation technologies.
  - $13.3 billion for federal “clean fleet” procurement and support.

- **<u>Electric Transmission:</u>** $2.9 billion for energy grid upgrades.
  - Funds grants to assist states with siting transmission projects, the DOE’s transmission planning and modeling capabilities and provides grants and loans for constructing high-priority transmission lines and modernizing critical grid infrastructure.
  - Electric transmission investment tax credit of 5%, with potential of 30% if prevailing wage, apprenticeship and long-term requirements are met.

- **Energy Efficiency Rebates and Tax Credits:**
    - $12.5 billion in home energy efficiency and appliance electrification rebates.
    - Nonbusiness and residential green energy and energy efficiency credits of 10% to 30%.
    - Energy-efficient commercial buildings deduction for energy usage reductions over 25%.

- **Industrial Energy:**
    - $4 billion for installing and implementing advanced industrial technology at energy-intensive industrial and manufacturing facilities.
    - $25 billion in tax incentives for extension of and modification of 48C tax credits for industrial combined heat and power (CHP) and qualified advanced energy projects.

Labor

- **Penalties under the NLRA:** Creates punitive financial penalties for employers that violate the National Labor Relations Act.
    - Fines can reach $50,000.
    - Fines increase to $100,000 for certain violations when the employer in question committed a similar violation within the previous five years.
    - When determining the fines, the National Labor Relations Board is required to consider: 1) the gravity of the actions of the employer; 2) the size of the employer; 3) the employer's history of unfair labor practices; and 4) the "public interest."

    Personal Liability for NLRA Violations: Penalties can also be assessed for directors and officers of the employer if they: 1) directed or committed the violation; 2) had established a policy that led to the violation; or 3) had actual or constructive knowledge of and the authority to prevent the violation and failed to do so.

- **OSHA Penalties:** Increases maximum penalty to $700,000 for willful and repeat violations and increases the minimum penalty to $50,000 for willful violations. Increases the maximum penalty for serious and failure-to-abate violations to $70,000.

- **Fair Labor Standards Act Violations:** Increases maximum civil penalty for willful or repeated minimum wage or overtime violations to $20,470 and $11,620 for tip violations.

- **Paid Family and Medical Leave:** Provides up to four weeks (or at the equivalent of four weeks if taken intermittently) for qualified caregiving for qualifying workers during a one-year benefit period. Qualified caregiving is defined as any activity described in the FMLA. However, this program expands the definition of qualified family member beyond the FMLA definition.
    - Individuals can take leave under this subsection to care for a spouse (including a domestic partner in a civil union or other registered domestic partnership recognized by a state); spouse's parent; child and a child's spouse; parent and a parent's spouse; sibling and a sibling's spouse; grandparent or grandchild and their spouses; as well as any other individual who is related by blood or affinity and whose association with the individual is equivalent of a family relationship.
    - The Secretary of the Treasury is charged with implementing the program and will determine a worker's weekly benefit amount. If a worker takes less caregiving leave than the full hours they normally work, the benefit is prorated. The weekly benefit rate is based on a worker's past earnings and will replace at least two-thirds of earnings for most workers.

    - All workers, including gig workers and the self-employed, are eligible for the program if they meet the program's income requirements. Wages or self-employment income at any time during the four months prior to the start of the individual's benefit period are required, provided that the individual has at least $2,000 in wages during the most recent eight-quarter period that ends within four months prior to the start date of the benefit period.

- **Registered Apprenticeship Programs:** Provides $500 million for registered apprenticeship programs and pre-apprenticeship programs that articulate to a registered program only. Funding is only available for registered programs (no industry-recognized apprenticeship programs).

Immigration

- Offers temporary protections and work permits for certain immigrant populations in need of certainty and also works to improve family and employment-based visa (green card) processing that has stagnated due to the pandemic. Appropriations are included for U.S. Citizenship and Immigration Services to implement these provisions.

- **Protections and Work Permits:** The Secretary of Homeland Security has the authority to allow people to enter or remain in the United States "for urgent humanitarian reasons or significant public benefit."
    - Expected to provide legal protections and employment authorization for 1.6 million Dreamers, 360,000 TPS recipients and more than 3 million essential workers, including 1 million farm workers.
    - These temporary protection requirements are for those who have entered the country prior to Jan. 1, 2011, pass an appropriate background check determined by the Secretary and are not deemed inadmissible to the United States on criminal, national security or other grounds.
    - This provision only applies to individuals who have lived and worked in the United States for more than 10 years and sunsets on Sept. 30, 2031.

- **Visa Recapture and Processing Improvements:** The legislation seeks to address the long-standing backlog of family-based immigrant visas and employment-based immigrant visas by preventing future loss of unused visas through a process that permits a rollover of designated categories from year to year. The legislation also addresses diversity lottery awardees who completed certain steps but were unable to enter the United States due to past executive orders or COVID-19-related issues by making these individuals permitted to reapply. Additional flexibilities are provided to individuals who are in the United States and eligible for Legal Permanent Resident adjustment so that they can receive work authorization, await green card processing and in some instances be exempt from numerical limits provided that certain steps have been taken.

Health Care

- **Increasing Access to ACA Marketplaces:** The BBB seeks to open additional access to the ACA Marketplaces for employees who meet certain financial criteria and receive employer-sponsored coverage costing 8.5% of income or more. Shifting away from employer-sponsored insurance will be an option for some employees.

- **Government-Led Price Setting:** The legislation penalizes pharmaceutical manufacturers and puts the government directly in the seat to negotiate and cap prices for certain medicines for Medicare Part B and D programs. The provision expands the program over time.