

Senate Passes Massive Tech, Trade Bill Aimed At China

By **Andrew Kragie**

Law360 (June 8, 2021, 9:56 PM EDT) -- The Senate on Tuesday approved a major bipartisan bill meant to fuel technological and economic competition with China with trade provisions and around \$200 billion in funding for semiconductors, telecom equipment and scientific research.

Senators voted 68-32 to pass the U.S. Innovation and Competition Act. Nineteen Republicans supported the bill along with all but one member of the Democratic caucus — Sen. Bernie Sanders, I-Vt., who had sought an equity interest in companies that accept semiconductor subsidies.

The sprawling bill includes more than \$50 billion in incentives for domestic semiconductor production, billions to boost research in emerging technologies through the National Science Foundation, \$1.5 billion to fund the USA Telecommunications Act's push for open 5G technologies, trade provisions including tariff relief, a boost for antitrust enforcement by hiking megamerger filing fees and a plan to collect demographic data to measure diversity among inventors.

The measure's lead sponsor, Majority Leader Chuck Schumer, D-N.Y., said passage marked "the moment when the Senate lays the foundation for another century of American leadership."

"As a percentage of GDP, we spend less than half as much as the Chinese Communist Party on basic research. We rely on foreign nations to supply critical technologies that we invented, like semiconductors," Schumer said on the Senate floor before the final vote. "I believe that this legislation will enable the United States to out-innovate, out-produce, and out-compete the world in the industries of the future."

Action now shifts to the House, where veteran lobbyists told Law360 the path forward remains unclear. The measure could change dramatically before it ever becomes law.

S. 1260, formerly known as the Endless Frontier Act, started out a year ago as a bipartisan proposal led by Schumer and Sen. Todd Young, R-Ind., to provide around \$100 billion for regional tech hubs and a new tech directorate at the National Science Foundation, whose funding proposal has been whittled down to less than \$30 billion.

Various elements worked through committees before Schumer unveiled a comprehensive package and senators attached a pile of amendments.

Russell Harrison, director of government relations for the research advocacy group IEEE-USA, said senators created "a grab bag of industrial planning, economic incentives for businesses, a general research bill — which is good — and a list of a bunch of little things that is getting longer and longer every day."

"It started life as a really visionary new approach to research," he said. "The current version is just a collection of programs loosely associated with research and then a little bit of the visionary stuff down at the bottom."

The final Senate vote came after Republicans forced Schumer to delay action last month and allow one more amendment vote. The proposal from Texas GOP Sen. John Cornyn to strip Davis-Bacon prevailing wage requirements failed on a 42-58 vote Tuesday in which eight Republicans joined all Democrats in opposition, but Cornyn still voted for final passage.

The bill would provide more than \$50 billion to fund the CHIPS for America Act that Cornyn championed last year. The funding is meant to spur domestic production of semiconductors, which are now critical to the American economy and national security. It would also likely boost U.S. companies including GlobalFoundries Inc., which recently drew Schumer's praise for moving its headquarters from Silicon Valley to upstate New York.

Aside from the semiconductor subsidies and the \$1.5 billion for telecom, the remaining approximately \$150 billion in the bill is merely authorized and still depends on approval through the congressional appropriations process, according to Holly Fechner, a Covington & Burling LLP partner who was previously a senior Senate staffer.

China provides a rare area of bipartisan agreement that has spanned the Trump administration into a new presidency. President Joe Biden last week expanded a policy started in the last administration to forbid U.S. investors from trading stock in companies linked to the Chinese military.

"Competition with an increasingly rising China is one of the very few issues that have clearly brought together Republicans and Democrats," said Ari Zimmerman, a senior policy adviser at Brownstein Hyatt Farber Schreck LLP who was previously a senior House staffer. "This could be one of the few large bills that receive broad bipartisan support" this year.

The Senate-passed bill now faces an unclear path in the House. The lower chamber could take up the Senate-passed bill or hammer out its own proposal, which could then require a conference committee to work out differences between the chambers.

Zimmerman noted that top House Republicans have urged the chamber's Democratic leaders to formulate a separate package through regular order before negotiating a deal with the Senate.

Reps. Ro Khanna, D-Calif., and Mike Gallagher, R-Wis., in April introduced a version of the Endless Frontier Act that was sent to both the Science Committee and the Energy and Commerce Committee.

Harrison said House Science Committee Chairwoman Eddie Bernice Johnson, D-Texas, appeared to have taken the lead with a package that looks more like "a standard reauthorization" for the National Science Foundation.

The NSF for the Future Act has already passed a subcommittee. Khanna said in a statement Tuesday that

he wanted to see "more components of the Endless Frontier Act being included in the full House Science Committee markup next week. This legislation will become the law of the land."

Covington's Fechner said House leaders "want to put their own stamp on it," with Democrats pursuing a broader bill that might touch on cybersecurity, climate change and societal inequalities.

"There is bipartisan, bicameral support to invest significantly in research in the United States to allow us to compete globally," she said. "The real challenge is an agreement on exactly how to do that."

The Biden administration last month cheered the Senate bill in a policy statement that said it would "strengthen our economic competitiveness by authorizing investment in our R&D capabilities and manufacturing base in a diverse set of U.S. regions and communities."

The administration also included a major research infusion in its budget request. The National Science Foundation's May 28 proposal included \$865 million to more than double funding for the Directorate for Technology, Innovation and Partnerships, with a focus on emerging technology areas similar to those emphasized in Congress.

--Editing by Peter Rozovsky.