

THE NEW ENGLAND COUNCIL

Weekly Washington Report Friday, June 20, 2008

Next Week in Congress

The House will begin its week with reforms to the Americans with Disabilities Act. Faced with returning home to concerns about gas prices during its 4th of July recess in two weeks, the House may address a number of individual energy bills. Several bills are being discussed for action, including measures that will work to tighten oversight of energy investments, and encourage energy companies holding leases on federal land to use unexplored portions of those leased areas to drill for oil and gas before new areas (specifically the Outer Continental Shelf) are made available. In addition, the House may debate measures increasing funding for public transit and increasing the government's ability to discover and eliminate price gouging. The Senate will take up the House-passed Fiscal Year 2008 supplemental appropriations bill that is supported by the Administration and likely return to the housing bill increasing oversight on Fannie Mae and Freddie Mac and providing reform and expansion of the Federal Housing Administration. Also on the Senate docket is a House-passed bill to reauthorize the Foreign Intelligence Surveillance Act. Next week is the final legislative week before Congress breaks for its 4th of July recess. After adjourning at the end of next week, Congress will not be in session until the week of July 7.

Appropriations

Late yesterday, the House passed an Administration-supported Fiscal Year 2008 supplemental funding bill (H.R. 2642), the primary function of which is to provide \$161.8 billion (no strategic policy strings attached) for military operations in Iraq and Afghanistan for the remainder of this year and the first half of 2009. The House voted to approve the Pentagon funding 268-155, which represented the first half of the two votes on the supplemental.

The second half of the supplemental (approved 416-12) includes several domestic funding items which originally had drawn a number of disapproving statements from the White House. An expansion of the original Montgomery GI bill, with an initial estimated cost of \$52 billion over 10 years (although initially it had a corresponding budgetary offset, making it deficit-neutral), was objected to by the White House. However, an agreement was reached with the Administration to modify the education benefit to make it transferable to veterans' family members (adding an additional \$10 billion to the cost (total cost: \$62.8 billion/11 years)) and dropping the budgetary offset. In addition, a proposal to expand unemployment benefits an additional 13 weeks for all states (beyond the current 26 weeks of benefits) and another 13 weeks beyond that for states with unemployment above 6% (for a 52-week total) was scaled back to merely include the 13-week expansion for all states. The Administration also agreed to the delay of 6 of its 7 proposed reforms to the

Medicaid program, add \$2.7 billion for relief in the flood-stricken Midwest, and advance appropriate (tallied to FY09 totals) \$5.7 billion for levee work in Louisiana.

Energy & Environment

With the price of a gallon of gas firmly entrenched above \$4, this week President Bush called on Congress to end the federal ban prohibiting the exploration of vast regions of the Outer Continental Shelf (OCS) off the Pacific and Atlantic coasts (including the eastern Gulf of Mexico) for oil and natural gas reserves. While specified areas of the OCS are already open for oil and natural gas activities (in waters off Alaska, Texas, Louisiana, Mississippi, and Alabama), since the early 1980's Congress has included a prohibition on energy development activities on the remainder of the OCS in annual appropriations bills funding the U.S. Department of the Interior. In addition, in 1990 President George H.W. Bush issued an executive ban on offshore drilling activities, an action extended by President Clinton in 1998 through 2012. Both the Congressional and Executive bans must be overturned for exploration in currently protected areas to move forward.

On Wednesday, the House Appropriations Subcommittee on Interior-Environment approved by voice vote its FY09 appropriations bill with continued OCS protection. An amendment was offered (and subsequently defeated 6-9) to overturn the ban. A similar amendment is expected when the full House Appropriations Committee considers the bill. Supporters of expanded exploration cite the nation's need to increase our domestic supply of energy, and note the safety and environmental record of current OCS activities, especially in weathering busy hurricane seasons several years ago. Opponents counter that the environmental hazards continue to outweigh any potential economic benefit, which will not be realized for several years. Estimates of the amount of resources in the OCS range from a 2006 Interior Department study that approximated 8.5 billion barrels of oil and over 29 trillion cubic feet of natural gas, to an Energy Information Administration survey that puts the amount closer to 18 billion barrels of oil.

The role played by commodities speculators on the high price of oil continues to see attention, particularly in the Senate where a number of proposals have been offered (although none have been ticketed for floor action). Earlier this week Sens. Joe Lieberman (ID-CT) and Susan Collins (R-ME), the Chairman and Ranking Member of the Senate Homeland Security and Government Affairs Committee, released several proposals, "aimed at curbing excessive speculation in the commodity markets," and, "to explore the role of commodity market speculation in the rising cost of food and energy," with the hopes of introducing formal legislation next week. Two of the proposals would, "Prohibit pension funds and governmental entities from investing in commodities; prohibit other large institutional investors from investing in commodities index funds," as well as, "Cap the amount of overall market share in any one commodity that can be held by financial speculators."

After an unusual technical error set back the process several weeks, this week the House and Senate voted to override the President's veto on the \$289 billion farm bill. The President had criticized the overall cost of the bill, and its inability to limit subsidies to higher-income farmers.

Technology

For the second time this month, on Tuesday the Senate failed to bring up debate on a broad bill to extend a number of business and individual tax provisions, including a seamless extension of the already-expired research and development tax credit and incentives for renewable and alternative energy. The motion to limit debate on the bill (H.R. 6049) failed 52-44, well shy of the 60 votes needed. Disagreements continue to center on the need to "pay for" the extension of current tax policy that is set to expire in the coming years. Government bookkeeping methods account for the revenue from the projected increase in tax rates when forecasting future budget deficits/surpluses, forcing Congress to find appropriate offsets to comply with budgetary rules. The Senate bill has a number of budgetary offsets to pay for extending the tax relief, an idea popular in the House but which does not have ample support in the Senate. The offsets include changing the tax rules governing deferred compensation practices as well as pushing back the start of a new tax law governing the determination of a taxpayer's foreign tax credit limitation. Had the Senate been able to muster the 60 votes, the Chairman of the Senate Finance Committee indicated he was prepared to offer a substitute amendment to H.R. 6049 (S. 3125) that would include an unpaid-for one year patch to prevent the expansion of the alternative minimum tax (a \$62 billion/10 year cost on its own).

With an August 3 deadline looming, earlier this afternoon the House passed an Administration-backed bill to reform the 1978 Foreign Intelligence Surveillance Act (293-129), likely preventing the expiration of the authority for electronic surveillance activities. Negotiations (primarily between those concerned with the protection of civil liberties and those who wished to see a strengthening of national security authority) had been held up due to a provision in the Senate bill (H.R. 3773) that would retroactively grant legal immunity to telecommunications companies that participated in warrantless surveillance activities. Under the new agreement (H.R. 6304), a U.S. District Court is able to grant immunity if there is significant evidence that individual telecommunications companies were given proper assurances by the government as to the legality of the warrantless wiretapping. There are several dozen pending lawsuits based on the surveillance activities covered under FISA. Moving forward, a secret FISA court would be responsible for the approval of wiretapping activities. The bill also includes language articulating FISA as the sole means by which the federal government can conduct such surveillance activities. Although provisions under FISA expired earlier this year, temporary, year-long surveillance authorizations were passed last August. H.R. 6304 includes a sunset provision that will allow Congress to revisit the surveillance issue in 2013.

Health Care

In an effort to meet the upcoming deadline to stave off Medicare's physician payment cuts, the Senate Finance Committee's ranking member, Senator Charles Grassley (R-IA), released a draft bill this week that will extend various existing Medicare programs for 18 months. Consistent with a Medicare bill he introduced earlier this month, the draft bill would provide physicians with a 0.5 percent increase for 2008 and then to 1.1 percent in 2009. Similar to the Medicare reform bill introduced by Finance Committee Chair Max Baucus (D-MT), the bill will be offset by a cut in bonus payments to Medicare Advantage plans and shifting funds in a Medicare physician payment account. Despite an Administration threat to veto any legislation that reduces funding to Medicare Advantage plans, Baucus has vowed to have a finished product by June 30.

On Monday, the Senate Finance Committee held a Health Reform Summit to discuss the nation's health care system. Speakers included Congressional Budget Office Director Peter Orzag and Federal Reserve Chairman Ben Bernanke. In his remarks to the Finance Committee, Orzag identified the growth rate in health care costs as the, "single most important factor influencing the federal government's long term fiscal balance," and pointed to two major healthcare programs— Medicare and Medicaid as, "the most determinant of long term trends in federal spending."

Under current law, the Congressional Budget Office predicts a significant increase in total healthcare spending citing a, "rise from 16 percent of the gross domestic product in 2007 to 25 percent in 2025 and 49 percent in 2082, and a net federal spending on Medicare and Medicaid will rise from 4 percent GDP to almost 20 percent over the same period." Chairman Bernanke also called attention to the urgent need for health care reform, stating that, "At some point the healthcare spending as a share of GDP will stop rising," and, "healthcare will become increasingly unaffordable," as a result of the outpacing of income with healthcare expenses. He recommended that Congress take an, "eclectic approach," to overhaul the healthcare system as opposed to waiting for a one-shot solution to fix its problems. There is bipartisan agreement in the Senate that major healthcare legislation will be necessary in 2009 to deal with the nation's healthcare condition.

On Thursday, the House Appropriations Committee's Subcommittee on Labor, Health and Education, approved a \$626 billion draft bill that will among other things provide a \$1.2 billion increase in funding to the National Institutes of Health bringing total funding to the institution to \$30.1 billion. The bill would provide the Department of Health and Human Services (HHS) with \$69 billion in discretionary spending for HHS. The bill will also include funding to expand state health coverage for the uninsured, expand high-risk insurance pools, develop educational programs for Medicare patients, provide training for health professionals and provide funding for rural health programs. Appropriations Committee Chairman David Obey (D-WI) stated that, "the investments in this bill will address the country's most pressing needs, and advance the country's health, well-being, and productivity." The President has threatened to veto any spending bill that exceeds his 2009 budget requests—the bill provides \$7.8 billion more than the President's budget in discretionary funding.

Financial Services

A \$61.5 billion bill (H.R. 6275) to blunt the annual expansion of the alternative minimum tax was approved by the House Ways and Means Committee on Wednesday 22-16. Similar to the one-year patch passed by Congress last year, disagreement centers on whether or not to provide budgetary offsets for the loss of \$62 billion in expected revenue over the next decade. After sending the Senate multiple AMT bills that included offsets and seeing them rebuffed, Congress passed an unpaid-for bill in 2007. The bill passed by the Ways and Means Committee this week includes 6 offsets (scored by the Joint Committee on Taxation). A Committee summary lists two of the largest offsets as preventing, "investment fund managers from paying taxes at capital gains rates on investment management services income received as carried interest in an investment fund. The bill would require such managers to treat carried interest as ordinary income received in exchange for the performance of services to the extent that carried interest does not reflect a reasonable return on invested capital," and second, "The bill excludes gross receipts derived from the sale, exchange or other disposition of oil, natural gas, or any

primary product thereof from the domestic production deduction for large integrated oil companies.”

As the Senate moved ahead with a broad housing bill (H.R. 3221), the Administration released a veto threat against the measure. While noting that, “Government Sponsored Enterprise (GSE) reform and FHA Modernization represent the appropriate next steps to address the housing downturn...The Federal Government must not prolong necessary corrections in the housing market, bail out lenders, or subsidize irresponsible borrowing and lending, at the expense of hard-working people who have played by the rules.” The housing bill approved by the Senate Banking Committee in May will dramatically expanding the loan authority given to the Federal Housing Administration, as well as create a long-debated oversight regulator and an affordable housing trust fund for GSEs Fannie Mae and Freddie Mac. The veto statement also specified its objection to a block grant program that would allow state and local governments to purchase foreclosed properties for the purpose of community development. On Thursday the Senate defeated a number of amendments aimed at eliminating core principles of H.R. 3221 by considerable margins.

Detailing the need to bring effective oversight and the ability to act swiftly to changes in the nation’s financial system, this week Treasury Secretary Henry Paulson called for an expansion of the powers of the Federal Reserve in order to, “begin to modernize our financial regulatory structure to reflect the breadth of financial institutions that finance the U.S. and global economy.” Referencing the Fed’s response to the sudden downtown of venerable Bear Stearns earlier this year, Paulson stated, “The Fed took this action to protect the system – not a particular institution. And we strongly supported this important step.” While significant reforms to our nation’s financial structure seem unlikely before a new Administration is in place, Paulson detailed three steps to achieve greater short-term oversight, “We should quickly consider how to most appropriately give the Federal Reserve the authority to access necessary information from complex financial institutions and the authority to act to mitigate systemic risk in advance of a crisis...Second, we need to take several critical steps to make sure that market discipline continues to play the vital role it needs to play to keep our financial system in balance, as we work to ensure the system's stability...Third, we must re-examine the emergency authorities of the Federal Reserve, Treasury and other financial regulators to ensure they are adequate to the roles they are expected to play in today's modern and multi-faceted financial system.”

In response to Secretary Paulson’s speech, the Chairman of the House Financial Services Committee, Congressman Barney Frank (D-MA), noted he will be holding hearings in July, “on the policy implications of the transformation of domestic and international financial markets -- chief among them are the dramatic growth in the share of assets held outside the commercial banking system, the complex arrangements that link firms that are regulated differently (or not at all) and the increasing amount of leverage,” and to, “explore the potential systemic risks associated with these developments, the adequacy of current oversight and tools, and the extent to which existing structures are adequate to respond to future problems.”

Higher Education

On Thursday, the House Appropriations Committee Subcommittee on Labor, Health and Education approved a \$626 billion draft Fiscal Year 2009 spending bill that would provide a \$3.1 billion increase in federal Pell grants. The increase would boost federal Pell grant funding to \$17.3 billion annually and increase the individual award for students to \$4,100.

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