



Weekly Washington Report
Friday, June 27, 2008

Next Week in Congress

Congress will be in recess next week to celebrate the 4th of July. The New England Council's Washington Report will return on July 11.

Appropriations

The Fiscal Year 2008 supplemental appropriations bill (H.R. 2642) is on its way to the President's desk after the Senate approved it on Thursday by a vote of 92-6. The bill includes \$162 billion for continued funding (free of policy direction) for military operations in Iraq and Afghanistan through year-end and well into 2009, and includes funding for a number of domestic programs. The bill contains an expansion of veterans' education benefits created under the original Montgomery GI bill, a 13-week expansion of traditional 26-week unemployment benefits, a delay in six of the seven Administration-backed Medicaid reforms, as well as funding for levees in New Orleans (\$5.8 billion) and aid for the flood-ravaged Midwest (\$2.65 billion). While many of the domestic priorities included in early drafts of the supplemental bill were removed prior to final passage to avert a Presidential veto, Congressional leaders have begun talking about a second domestic-policy-focused FY08 supplemental supporting programs like the Low Income Home Energy Assistance Program. The House passed H.R. 2642 last week.

While the House and Senate Appropriations Committees have made progress on individual FY09 spending bills (passing five and three bills out of full committee respectively), the House committee was unable to make further progress yesterday after a meeting to consider the FY09 Labor, Health and Human Services, and Education bill was adjourned. Supporters of opening new areas of the Outer Continental Shelf to oil and gas exploration attempted to add the full text of the Interior-Environment appropriations bill to the Labor/HHS bill in hopes of amending the Interior bill to allow additional exploration. It continues to seem highly likely that few (if any) FY09 appropriations bills will be passed by the end of the fiscal year (Sept. 30) and a continuing resolution will be needed to fund the government beyond November's election through the beginning of calendar 2009.

Energy & Environment

Continuing their efforts to uncover the factors responsible for record oil and gas prices, multiple Congressional Committees held hearings this week focused on the possibility that speculators (investors interested in financial profit instead of those who may take physical ownership of the commodity) are driving up oil prices beyond the forces of normal supply and demand economics. While a number of bills have been introduced in both chambers, none have been tabbed by leadership as the

preferred vehicle to measure the extent of the problem and rein in or prohibit commodities investors. The range of ideas includes increasing transparency in foreign markets, limiting the ability of large institutions (including pension funds and investment banks) to invest in commodities, and increasing funding and personnel for the Community Futures Trading Commission (CFTC). On Tuesday during testimony before the Senate Committee on Homeland Security and Governmental Affairs, as well as the House Committee on Agriculture, CFTC Chair Walter Lukken stated that his organization, "is committed to ensuring that our nation's futures markets operate fairly and efficiently, and that the prices of commodities, including crude oil, are determined by the fundamental forces of supply and demand, rather than abusive or manipulative practices." The Senate Homeland Security Committee Chair, Senator Joe Lieberman (ID-CT), stated that while, "Speculation is not illegal... that does not mean it isn't hurtful...Speculation has passed the point where it provides stability to the commodity markets. It is now excessive and has consequences that are very, very harmful."

During a Joint Economic Committee hearing on Wednesday, Dr. Daniel Yergin, Chairman of the Cambridge (MA) Energy Research Associates, testified that, "Financial markets are today playing an increasingly important role in price formation – responding to, accentuating, and exaggerating supply and demand, geopolitics, and other trends." But in the search for one or two magic-bullet solutions to lowering oil prices, Dr. Yergin stated, "The answer to the oil shock is not 'either-or'. We need an ecumenical approach—a combination of new supplies, renewables, and greater efficiency—all developed with appropriate environmental and climate change considerations in mind."

The House had mixed success this week in moving forward on a handful of narrow energy provisions. On Thursday the House passed two bills, the first providing funding for mass public transit systems (H.R. 6052, 322-98) and the second to extend the scope and authority of the CFTC's emergency powers (H.R. 6377, 402-19). However, efforts to force companies to explore the entire breadth of land they lease from the federal government for oil and gas exploration before the government grants new leases (H.R. 6251) failed to receive enough support to overcome the necessary two-thirds vote that was required. By Thursday the White House had voiced its opposition to all three bills mentioned above. Earlier in the week the House came up short of the two-thirds necessary to approve a bill (H.R. 6346) to discover and punish price gouging at the gas pump. Over the last few days the price of a barrel of oil has breached \$140 on the NYMEX.

On Wednesday, the Deputy Director of National Intelligence for Analysis and Chairman of the National Intelligence Council Dr. Thomas Fingar testified on the findings of an intelligence report concerning climate change and its effect on national security before a joint panel of a subcommittee of the House Intelligence Committee and the Select Committee on Energy Independence and Global Warming. Dr. Fingar outlined the destabilizing effects climate change can have in already weakened areas by, "worsen[ing] existing problems—such as poverty, social tensions, environmental degradation, ineffectual leadership, and weak political institutions." He continued that, "The United States depends on a smooth-functioning international system ensuring the flow of trade and market access to critical raw materials such as oil and gas, and security for its allies and partners. Climate change and climate change policies could affect all of these...with significant geopolitical consequences."

Healthcare

On Tuesday, despite ongoing negotiations with the Senate, the House took up its version of a Medicare reform bill to stave off a physician payment cut set to take effect next week. The Medicare Improvements for Patients and Providers Act (H.R. 6331), introduced by Energy and Commerce Committee Chairman John Dingell (D-MI) and Ways and Means Chairman Charles Rangel (D-NY) was passed by a vote of 355-59. The bill will stop a scheduled 10.6% physician payment cut scheduled for July 1, freeze Medicare payments for the rest of the year, and provide a 1.1% pay increase to physicians beginning January 1, 2009. The bill also provides for an increase in payments to rural providers; supports Medicare mental health parity and programs for low income Medicare beneficiaries, extends preventative services under Medicare, promotes e-prescribing, and delays competitive bidding for Durable Medical Equipment for 18 months.

According to the Congressional Budget Office the bill is offset by cuts in bonus payments to Medicare Advantage plans in areas with teaching hospitals (Medical Advantage Indirect Medical Education) and private-fee-for-service changes that will require plans to establish a network of providers similar to that of other types of Medicare Advantage plans. House Ways and Means Committee Chairman Charles Rangel commended his colleagues for bipartisan, veto-proof support of the bill, touting it as a, "reasonable compromise that makes modest but necessary, improvements to Medicare."

The Administration reiterated its strong opposition for the bill in a Statement of Administrative Policy this week, referring to the measure as an, "inappropriate reduction in Medical Advantage payments," that would, "fundamentally change the private fee for service program and consequently reduce access, benefits, and choices for many of the approximately 2.25 million beneficiaries who have chosen to enroll in private fee-for-service plans, many of whom live in rural areas." The statement cited the President's objection to, "any policy that undermines efforts to promote fiscal solvency in the Medicare or Medicaid programs or disturbs, undermines, or overturns the many successes of the Medicare prescription drug benefit."

On Thursday, the Senate failed to generate the support needed to invoke cloture (limiting debate) and ensure the passage of H.R. 6331 by a two-vote margin (58-40). The Senate's inaction has almost guaranteed that the 10.6% cut in Medicare payments scheduled for July 1 will take place. With the possibility of a retroactive solution, the Senate will likely take another shot at the bill after its Fourth of July recess.

On Tuesday, the Senate Appropriations Committee's Subcommittee on Labor, Health and Human Services, and Education approved its FY09 spending bill that includes a \$1.1 billion increase in funding to the National Institutes of Health, bringing total funding for FY09 to \$30 billion.

Financial Services

A day after the White House came out in opposition to the bill, on Wednesday the House passed a bill (233-189) to stem the reach of the alternative minimum tax from affecting an additional 25 million taxpayers in 2008. The \$62 billion measure (H.R. 6275) is fully offset making it compliant with budgetary rules but seemingly

dooming its prospects in the Senate. On two occasions last year Senate supporters of offsetting patches to the AMT were unsuccessful in moving the bills through the Senate (ultimately leading to an unpaid-for one-year patch in 2007), and it seems unlikely that will change this year. Last week the Senate Finance Committee Chair was prepared to add a non-offset, one-year AMT patch to a wide-ranging tax relief extension bill (reviving the expired research and development tax credit), but the bill failed to move forward. There is no timeline for the bill to be brought back to the Senate floor.

The offsets in the House bill include an increase in tax rates on the “carried interest” earned by investment managers, treating it like traditional income instead of capital gains, as well as provisions eliminating a domestic manufacturing deduction for oil and gas companies and increasing an IRS reporting requirement for credit card companies focused on giving the IRS a more accurate picture of the income of individual businesses. In its policy statement to accompany H.R. 6275, the Administration agreed that, “it is imperative for Congress to act in a timely manner to protect 26 million Americans from an unwelcome tax increase, and not to repeat the unnecessary administrative complexity caused by congressional delay in 2007.” However, “The Administration does not believe that the appropriate way to protect the 26 million Americans from higher 2008 AMT liability – including 22 million that would be newly exposed to the AMT – is to impose a tax increase on other taxpayers.”

The Senate was unable to complete action on H.R. 3221, a broad housing bill that includes reforms and a \$300 billion expansion of the loan authority granted to the Federal Housing Administration, the creation of an oversight regulator for Government-Sponsored Enterprises Fannie Mae and Freddie Mac, and a number of tax-breaks focused on boosting the housing market. After successful procedural votes on Tuesday (83-9) and Wednesday (79-16) seemed to pave the way for a final vote on Thursday or Friday, the measure bogged down after the author of an amendment encouraging the development of renewable and alternative energy sources worked to delay final passage with the hope his energy amendment would receive a vote. In April the Senate attached the renewable energy package on an earlier housing bill 88-8. However, the tax breaks, focused on the development of solar, wind, and other forms of renewable energy, are not offset and if they were added to the housing bill, would stand little chance of surviving when H.R. 3221 is sent back to the House. The Senate is expected to hold a procedural vote on the bill soon after its return in July. Even if final passage is agreed to during the first full week in July, the House is expected to make further changes when it returns to them.

Higher Education

Recently Senator Edward M. Kennedy (D-MA) called on the American Association of Community Colleges President and CEO George R. Boggs to urge community colleges to register for the Direct Loan Program. Despite the passage of the Ensuring Continued Access to Student Loans Act in May, lenders such as Citibank, SunTrust, JPMorgan Chase, and PNC have already begun dropping less competitive institutions, according to findings noted by Sen. Kennedy’s letter. “Colleges participating in the Direct Loan Program have not and will not face the possibility that their lender will pull out,” Kennedy explained, because they are funded by the U.S. Treasury, and are therefore, “insulated from the volatility in the credit markets.” He also assured that electronic processing and expedited assistance from the Department of Education for

participants will make the shift to the Direct Loan Program, "easy and quick," for most colleges.

Senator Kennedy has encouraged all eligible schools to consider enrollment in the expanded Direct Loan Program. 288 new schools have become eligible since February 29th, which is four times the number of schools that have moved to the program in recent years. According to Secretary of Education Margaret Spellings, capacity could be doubled without overtaxing the system. Sen. John Kerry (D-MA) and Rep. Paul Kanjorski (D-PA) have introduced bills with other approaches to keep lenders in the Federal Family Education Loan program.

Congress also cleared an extension of the Higher Education Act this week, the 7th extension of the year. The current extension is scheduled to expire on June 30, but Congressional action this week ensures the Act's operation through July 31.

Technology

Final approval of a bill to reform the Foreign Intelligence Surveillance Act has been delayed until after the Independence Day recess, falling victim to a crowded Senate schedule the latter part of this week. Earlier in the week, the FISA bill (H.R. 6304) passed an important procedural vote 80-15. Opposition still remains to provisions creating the strong possibility of retroactive immunity for telecommunications companies that participated in the Administration's post-9/11 wiretapping program. Moving forward, a secret FISA court will grant approval and monitor the surveillance activities. When the Senate returns, an amendment will likely be offered to simply strip the immunity language (allowing the lawsuits to move forward), as well as an opposite effort to dismiss the several dozen lawsuits pending against telecommunications companies. The House passed H.R. 6304 last Friday.

This week the House Committee on Homeland Security passed the Cybersecurity Education Enhancement Act (H.R. 263), establishing a grant program through the Department of Homeland Security, working with the National Science Foundation, to encourage the creation of cybersecurity research and training at institutes of higher education.

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