

# THE NEW ENGLAND COUNCIL

*The Weekly Washington Report is organized by NEC committee category for weekly updates on specific issues relevant to our members, plus a report on general activity in Congress*

## **WEEKLY WASHINGTON REPORT** **FRIDAY, MAY 1, 2009**

### **NEXT WEEK IN CONGRESS**

The Senate is expected to take up a measure modifying a number credit card industry practices relating to billing and interest rates, as well a bill to strengthen the Federal Deposit Insurance Corporation and expand a federal program for struggling homeowners (see below). The House will tackle a bill to combat predatory and risky lending practices (H.R. 1728) and expand financial fraud statutes. There are three legislative weeks remaining before the week-long Memorial Day recess.

### **GENERAL GOVERNMENT/BUDGET/APPROPRIATIONS**

This week Congress approved its Fiscal Year 2010 (FY10) budget resolution, crystallizing an all-too familiar debate on Capitol Hill: the need to invest in critical industries and infrastructure (education, health care, energy) balanced against the aggravating of historic budget deficits and a surging national debt. The \$3.5 trillion budget, passed by the House and Senate on Wednesday with no Republican support, contains nearly \$530 billion in non-defense discretionary spending, \$1.086 trillion in overall discretionary spending, and is projected to produce a \$1.2 trillion deficit in FY10 (about one-third of the overall budget). The overall discretionary level is about \$10 billion less than the Administration's request. The measure includes filibuster-proof reconciliation instructions in the areas of health care and student loans, provisions supporters believe is merely an insurance policy to hedge against partisan gridlock through the remainder of the year. The budget includes a patch to blunt the reach of the alternative minimum tax for three years but does not extend the President's Making Work Pay tax credit beyond 2010 unless it can be offset. The Administration is expected to release its detailed program-by-program FY10 budget blueprint next week.

The House Appropriations Committee is slated to mark-up an FY09 supplemental funding request for military operations in Iraq and Afghanistan on

Thursday. Potential hurdles may arise in both chambers surrounding a number of diplomacy and military-related issues, including U.S. relations with North Korea, Defense Department procurement practices, the Administration's desire to close the Guantanamo Bay detention facility, and U.S. policy in the Middle East. However, the \$83.4 billion measure is expected to head to the White House before Memorial Day.

Reports indicate that Associate Justice of the Supreme Court David Souter, a long-time New Hampshire resident and a former New Hampshire Attorney General, is planning to retire when the current term of the Court ends this summer. Justice Souter has served on the Supreme Court since 1990 when he was nominated by former President George H.W. Bush and confirmed by an overwhelming Senate vote of 90-9.

### **FINANCIAL SERVICES**

Senate supporters of a provision to expand the ability of bankruptcy judges to help struggling homeowners couldn't muster enough support to attach the "cram-down" provision to a larger housing bill (S. 896), losing a 45-51 vote earlier this week. The measure, which needed 60 votes to break a threatened filibuster, would allow judges to modify the terms (including a reduction of principal) of an owner-occupied primary-home mortgage, originated before 2009, with a maximum value of \$729,000. In addition, owners would have to provide mortgage holders a 45-day notification before filing for bankruptcy in order to allow lenders the opportunity to modify the loan on its own terms. Opponents argue the uncertainty posed by the provision would force lenders to hedge that risk by raising interest rates on other loans. The overall bill (similar to House-passed H.R. 1106) expands and streamlines the Federal Housing Administration-backed Hope for Homeowners initiative and increases the borrowing authority of the Federal Deposit Insurance Corporation.

In a strong bipartisan vote the House yesterday passed a Credit Cardholders' Bill of Rights measure (H.R. 627, 357-70), handing the responsibility to the full Senate which is expected to address its own credit card measure next week (S. 414). The bill looks to crack down on what many in Congress believe are abusive practices surrounding significant and sudden interest rate increases and questionable billing practices that are confusing and prohibitive to many card holders, while protecting younger consumers by creating a minimum age limit for credit approval and credit ceilings for college students. Both bills contain many of the regulations announced by the Federal Reserve and slated to take effect in 14 months. In previewing next week's Senate debate, the Chairman of the Senate Banking Committee (and author of S. 414) Senator Chris Dodd (D-CT) stated that his bill is a unique, "opportunity to end the abusive and predatory practices of the credit card companies. Americans do not deserve -- and cannot afford -- to be pushed down the economic ladder by credit card companies any longer." The American Bankers Association continues to oppose the bills, saying, "legislative

efforts should strive to achieve the right balance between enhancing consumer protection and ensuring that credit remains available to consumers and small businesses at a reasonable cost. We continue to believe that more work needs to be done to achieve that balance.”

On Wednesday the House Financial Services Committee approved a sweeping mortgage measure (H.R. 1728) to curb what bill supporters view as “predatory”, unfair, and risky lending practices adversely affecting homeowners. The bill seeks to ensure lenders retain some financial interest in the mortgages they approve, mandating lenders maintain a minimum 5% stake in mortgage-backed security products sold to investors unless otherwise granted an exception. In order to prevent the pushing of mortgage applicants into risky or unaffordable loans, the bill, “would ban yield spread premiums and other abusive compensation structures that create conflicts of interest or reward originators that ‘steer’ borrowers.” Renters of foreclosed properties are given a three-month window before they are required to vacate and lenders are required to ensure that borrowers can keep loans current following introductory periods with lower interest rates. The bill will be considered by the full House next week.

## HEALTHCARE

On Tuesday the Senate confirmed Governor Kathleen Sebelius as Department of Health and Human Services Secretary by a vote of 65-31. Senate Finance Committee Chairman Max Baucus (D-MT) released a statement applauding the Sebelius confirmation. “Governor Sebelius is the right person to lead the Department of Health and Human Services. She’s a problem solver, and that’s what Congress needs in a partner for health care reform,” he said. Gov. Sebelius was sworn into office as the new Secretary of Health and Human Services later the same day.

On Friday the Centers for Disease Control (CDC) elevated the H1N1 flu (or Swine Flu) to a Phase 5 category which is a, “strong signal that a pandemic is imminent and that the time to finalize the organization, communication, and implementation of the planned mitigation measures is short.” Earlier this week, President Obama wrote a letter to Congress requesting that \$1.5 billion in federal funding be used for, “supplementing anti-viral stock piles, developing a vaccine; supporting the monitoring, diagnostic, and public health response capabilities; and assisting international efforts to stem this outbreak.” The federal government has declared Swine Flu a public health emergency. According to the CDC, 109 cases of the disease and one fatality have been reported in the United States. The CDC has urged the public to stay informed about the disease; take everyday actions to stay healthy; follow public health advice; and develop a family emergency plan.

Similar to the health care principles set in President Obama’s FY10 proposed budget, Congress’ approved budget resolution health provisions focus largely on

decreasing the rising costs of health care for families, businesses, and the government by setting aside resources to eliminate waste, fraud and abuse in health programs and putting various cost containment mechanisms in place to sustain the nation's failing health care system. The budget resolution also assumes the goal of providing safe, quality, and affordable healthcare to all Americans and establishes a deficit neutral reserve fund for health reform. Among other things, the budget resolution conference report provides \$449.7 billion for the Medicare program in 2010. The resolution also provides \$384.3 billion for health programs—including Medicaid, State Children's Health Insurance Program (SCHIP), Food and Drug Administration, Centers for Disease Control and the National Institutes of Health—in 2010 and \$1.9 trillion over five years.

## **ENERGY/ENVIRONMENT**

The House Energy and Commerce Committee was slated to mark-up a massive renewable energy and climate change bill this week, but have delayed the mark-up indefinitely. There are a number of to-be-resolved issues which include the siting of new power lines in the creation of a "smart" electric grid, modifications to the renewable portfolio standard mandates, and details concerning the allocation (through sale, auction, or free distribution) of emission allowances.

Secretary of Labor Hilda Solis recently testified in front of the Senate Committee on Health, Education, Labor and Pensions on the importance of green job training for the country's workers. Investing in green jobs, she said, will, "not only secure America's energy supply, but will do so in ways that promote economic stability." Secretary Solis added that many green jobs, particularly in the field of construction, pay wages that are 10-20 percent higher than average and are not traditionally outsourced. She praised the passage of the American Recovery and Reinvestment Act of 2009, calling it a significant investment in our nation's economic success while noting that the Department of Labor's Employment and Training Administration has already made available \$3.47 billion of Recovery Act funds for workforce investment.

## **HIGHER EDUCATION**

The FY10 budget resolution includes reconciliation instructions that require the education committees to report an education bill which reduces the deficit by \$1 billion by October 15. The budget resolution conference report also includes a "Sense of Congress" provision which addresses college affordability and student loan reform stating that to ensure access to a quality and affordable college education for all Americans, "any reform of the federal student loan programs to ensure that students have reliable and efficient access to federal loans should include some future role for the currently involved private and non-profit entities, including state non-profits with 100% FFEL lending in the State, and capitalize on the current infrastructure provided by private and non-profit entities."

## TECHNOLOGY

Yesterday the House Judiciary Committee held its first hearing on a patent law reform bill (H.R. 1260) close to a month after the Senate Judiciary Committee approved its version (S. 515). No timeline has been announced for a mark-up and similar sticking points exist among House members that have hampered Senate debate. Disagreements continue to surround “gatekeeper” language specifying how damages should be quantified and awarded in infringement lawsuits and efforts to curtail lawsuit forum shopping allowing litigants to file in the most lucrative or friendly venue. It is possible the change in minority leadership on the Senate Judiciary Committee (with Senator Jeff Sessions (R-AL) expected to assume the Ranking Member seat) may dim the prospects of action on the Senate version.

Two separate cyber-attacks reported in the last month have drawn increased attention to the protection of our nation’s computer infrastructure. In the past several weeks details have emerged about the unauthorized accessing of information on the Department of Defense’s Joint Strike Fighter program as well as a report that the national electric grid has been accessed by cyber-spies mapped the system and installed programs possibly capable of disrupting electric transmissions. The Administration recently completed a 60-day review of the country’s cyber-protection capabilities, and will be under scrutiny when deciding in the coming days and weeks which agencies (National Security Agency, Department of Homeland Security, the Department of Defense) will lead which efforts and how extensively private sector cyber-infrastructure (including the electric grid and telecommunications) will be included. In the past few weeks reports have surfaced that a new command at the Department of Defense, possibly headed by the head of the National Security Agency, will be created to oversee the Pentagon’s networks and develop *offensive* cyber-weapons.

The end of the Administration’s review of our national cyber-security capabilities has prompted leading members of the Senate Commerce and Homeland Security Committees to introduce cyber-security legislation, as well as members of the House Homeland Security and Energy and Commerce Committees. This week Homeland Security members in both chambers introduced legislation to empower the Federal Energy Regulatory Commission to undertake emergency actions to protect electric cyber-infrastructure and thwart possible threats. Jurisdiction among a number of committees, including the intelligence committees, will be a prickly issue as a larger federal cyber-security strategy begins to form.

Throughout April the U.S. Customs and Immigration Services (USCIS) made several announcements showing a significant drop-off in applications for Fiscal Year 2010 H-1B visas over last year’s pace. Last year applications soared well above the 65,000 cap in a number of days. However, on Monday USCIS

announced it has only received 45,000 filings, up from the 42,000 it announced on April 9. The decline in applications could be a result of the overall reduction in jobs being created during the recession as well as restrictions included in the American Recovery and Reinvestment Act making it more difficult for some companies to hire temporary employees through the H-1B process. An H-1B visa is a 3-year visa (with the possibility for a 3-year extension) for highly-skilled foreign workers. Opponents of the program contend more must be done to ensure employers are thorough in attempting to hire domestic workers before entering the H-1B process.

Recently House Committee on Oversight and Governmental Reform panel held a hearing on the rights of H-2B guest workers with witnesses testifying that he and other guest workers were subjected to poor conditions and threatened with loss of immigration status and deportation if they complained or attempted to end their employment. Witnesses called on the Department of Labor (DOL) to penalize employers for violation of workers' rights and to provide safe channels for the reporting of abuses that prevent retaliation by employers leading to deportation. Jurisdiction over the H-2B program shifted from the Department of Homeland Security to the DOL in January of 2009, which according to subcommittee members cited insufficient staffing as a reason for their inability to supply a DOL witness to testify at the hearing. An expert witness from George Mason University advocated for a "free agent" model allowing workers to transfer their visa to different employers rather than being dependent on one company for legal status, leading to greater benefits for workers than an increase in regulation by the DOL. He also noted that increasing regulation or mandating benefits for guest workers could backfire and cause employers to lower wages or hire fewer workers.

## **TRANSPORTATION**

The Congressional budget approved this week provides \$88.2 billion in funding for the nation's transportation system—highways, mass transit, railways and aviation—for FY2010, and \$449.9 billion over five years. The conference report also establishes deficit neutral reserve funds for transportation reauthorization legislation and intermodal transportation initiatives, and sets aside \$1 billion for high speed rail.

## **TRADE**

In mid-April, prior to the Summit of the Americas, President Obama announced he was ending a number of restrictive policies towards Cuba without calling for the elimination of the trade embargo in place since the early 1960s (only Congressional action can remove the embargo). The changes include allowing Americans with family in Cuba to visit the island as often as they like and send unlimited amounts of money and goods to them as well. In addition, U.S.

telecommunications companies are no longer prohibited from attempting to conduct business in Cuba (if permitted to by the Cuban government).

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