ML Strategies Legislative Update

ML STRATEGIES

Neal Martin rnmartin@mlstrategies.com
David Leiter djleiter@mlstrategies.com
Jeremy Rabinovitz jrabinovitz@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
202 434 7400 fax
www.mlstrategies.com

SEPTEMBER 11, 2012

Congress Returns for Final Session Before Elections

The House and Senate return this week from the annual August (+ one week) recess for a short session that will likely include no more than eight legislative days. Both reconvened yesterday and will be in all week. Next week, they are in session Wednesday through Friday. With that, both the House and Senate are then expected to break until after the elections when they will return for a lame duck session.

The political implications of any legislative victories – or compromises – during the coming days are amplified by the recent Republican and Democratic party conventions which officially started the general election campaign season. It is unclear whether any so-called convention bounce for Governor Romney or President Obama will be lasting, but both parties have now clearly laid out their vision for governing next year in the new 113th Congress and in a new, or second, presidential administration.

Before adjourning for the August recess, in a four week work period following the 4th of July recess, Congress gave final approval to, and sent to the President for signature, the *Pilots Bill of Rights Act*, the *North Korea Human Rights Reauthorization Act*, the *Iran Threat Reduction and Syria Human Rights Act*, the *Presidential Appointment Efficiency and Streamlining Act*, and, most notably, the *Sequestration Transparency Act*. The sequestration transparency bill requires the President, within thirty days of passage of the bill, to provide Congress with a detailed report on the implementation of the mandatory spending cuts, or sequestration, required under the *Budget Control Act of 2011* (BCA). Those cuts are set to be implemented in January 2013. More on this below. Last week, the White House announced that they would not meet the September 6 deadline for the report, but indicated that it will be delivered by this Friday, September 14.

By almost any standard this has proven to be a rather unproductive congress, although there have been some significant legislative accomplishments this year, including:

- a two year transportation reauthorization bill
- a bill to maintain interest rates on student loans at the current rate for one year
- a bill extending the National Flood Insurance Program (NFIP)
- reauthorization of the Federal Aviation Administration
- a 10-month extension of the payroll tax cut, unemployment insurance, and Medicare "doc fix"
- the *Jumpstart Our Business Startups* (JOBS) *Act*
- reauthorization of the Export-Import Bank
- the *Food and Drug Administration Safety and Innovation Act*

Due to the limited time they are in session, not to mention the impact of the election season, Congress will have an abbreviated legislative agenda in September.

With the current fiscal year ending on September 30, and not one appropriations bill having been given final approval by Congress, one of the first items on the agenda this month will be a **Continuing Resolution for Fiscal Year 2013**, funding the federal government through the first six months of the new fiscal year. Prior to leaving Washington for the August recess, House and Senate leaders brokered the outlines of the short-term CR that is in line with the Budget Control Act funding levels of $1.047 trillion. The BCA limited spending for FY13 at $546 billion for defense and $501 billion for non-defense. In an effort to avoid a government shutdown should a CR not be passed, the resolution will not include any policy riders. The House is expected to take up the measure this Thursday, September 13, with the Senate acting next week.

House Majority Leader Eric Cantor (R-VA) has said that the House will take up a bill to extend **Permanent Normal Trade Relations (PNTR) to Russia** in September. The White House has previously said that PNTR for Russia is the Administration's top trade priority and congressional Democrats have expressed their support as well; however, the likelihood of the bill seeing final approval before the election is not assured. Without PNTR, businesses in the U.S. will not benefit from the concessions made by Russia related to opening its markets as a part of their August 22 accession to the World Trade Organization.

With the agriculture sector suffering tremendously from the very serious drought in the Midwest, there was some talk in July of breaking **disaster relief** provisions out of the Farm Bill (see below) in order to provide some level of assistance. Those discussions did not lead to any legislation, but, with Hurricane Isaac having caused significant flooding on the Gulf Coast, there could be a renewed effort to approve a drought and hurricane disaster relief bill in September.

After the Senate failed to invoke cloture on the **cybersecurity** bill (S. 3414) on August 2, most observers concluded that the measure would be shelved, at least until the lame duck session. However, the Obama Administration has indicated that it might take action on cybersecurity via an Executive Order. It is still unclear how far the scope of such an Executive Order would extend, and it is not clear that the President has the authority under existing law to impose cybersecurity requirements on private sector networks through an Executive Order. Cybersecurity seems to have at least a small chance for resurrection on the Senate floor in September, or, if not then, in the lame duck session.

There are numerous other legislative efforts that are sure to be left until the post-election lame duck session of congress:

The *Agriculture Reform, Food, and Jobs Act*, a five-year authorization measure generally known as the **Farm Bill**, was approved by the Senate in June, and the House Agriculture Committee passed a five-year bill that never made it to the floor for consideration before the August recess. There is no expectation that a five-year Farm Bill will be taken up during the short September session of Congress, but it will likely be dealt with during the lame duck session –by which time the existing authorization bill will have expired. With that in mind, there is a strong likelihood that Congress will pass a short-term reauthorization before the end of September.

The House **Fiscal Year 2013 National Defense Authorization Act**, H.R. 4310, was approved in May and the Senate Armed Services Committee approved its bill, S. 3254, in June. Congress has passed an annual Defense authorization bill for more than half a century, so there is reason to believe that they will do so again this year, with Senate and final action waiting until the lame duck.

The House Ways & Means Committee and Senate Finance Committee have been working since April on a **Miscellaneous Tariff Bill** (MTB) – typically duty suspensions on narrowly defined products. The committees, along with the U.S. International Trade Commission, are in the process of reviewing the approximately 2,100 bills they received from members. The last time a MTB was taken up, in 2010, there were about half as many bills to review and the final measure wasn't approved until very late in the lame duck. We expect similar timing, but understand that final passage of a MTB is a high priority.

Senate Democrats are likely to make a push during the lame duck for passage of S. 1000, the **Energy Savings and Industrial Competitiveness Act**, introduced by Senators Shaheen (D-NH) and Portman (R-OH).

The **Law of the Sea (LOS) Treaty** enjoys a broad range of support from various industry sectors, including telecommunications, defense, and the environmental community. However, any action by the Senate, the only chamber required to approve the treaty, will have to wait until the lame duck.

Postal Reform legislation was passed by the Senate earlier this year, but the House has not acted. Prior to the start of the August recess, the Postal Service announced that, without reform legislation, it will default on payments to retiree health benefits that are due by the end of September. However, House leaders have not indicated any desire to take up this measure until the lame duck.

Finally, Congress and the White House are under increasing pressure to address the looming **"fiscal cliff"** – the convergence of numerous factors including the expiration of the Bush-era tax cuts, mandatory spending cuts (also known as sequestration) required by the *Budget Control Act*, the deadline for addressing tax extenders, and the expiration of unemployment benefits and the Medicare "doc fix."

Various parts of the fiscal cliff unfold as follows:

- September 30 - expiration of the authorization for the Temporary Assistance for Needy Families (TANF) program

- November 3 – 60-day advance notification deadline for layoffs under the *Worker Adjustment and Retraining* (WARN) Act, requiring entities with more than 100 employees to provide a 60-day notice of plant closings or layoffs. Defense contractors have threatened to begin sending such notices if the mandatory spending sequestration is not circumvented (sequestration goes into effect on January 3, 2013)

- December 31 – expiration of the Bush tax cuts

- December 31 – expiration of the Medicare Sustainable Growth Rate (SGR) – also known as the "doc fix"

- December 31 – expiration of extended unemployment insurance benefits

- December 31 – expiration of the Alternative Minimum Tax "patch"

- December 31 – expiration of current estate and gift tax rates

- December 31 – deadline for addressing tax extenders

- January 3 – spending sequestration takes effect

- February/March – the federal government reaches the debt ceiling

While addressing the fiscal cliff is a heavy lift, there has been some progress.

The White House is said to have pushed very hard for the spending agreement referenced above for the FY13 Continuing Resolution (6 months at BCA spending levels) because they believe they can secure the "$4 trillion grand bargain" (the required decadal deficit reduction under the BCA) in the lame duck. However, some feel that a more likely scenario is that the lame duck leaves the grand bargain for future debates and agrees to $109 billion cuts for FY13 while extending expiring tax cuts and delaying sequestration for a year. It is also possible that Congress punts the entire issue to next year, especially if the Republicans capture the White House and Senate.

Before leaving Washington for the August recess, the Senate Finance Committee approved *The Family and Business Tax Cut Certainty Act of 2012* (the tax extenders package), extending dozens of tax-cuts that have expired or will expire at the end of the year, and addressing the Alternative Minimum Tax (AMT) for two years. The bill would, among other provisions, extend the renewable electricity production tax credit and the investment tax credit in lieu of the production tax credit for projects that commence construction before 2014. It also would modify the tax treatment of certain payments to controlling exempt organizations.

Whether or not the President and Congress can reach agreement on addressing the fiscal cliff during the lame duck remains to be seen, and is in large part dependent on the outcome of the elections. Regardless, this is a matter that will in no way be dealt with in September or before the elections.

* * *

Click here to view ML Strategies professionals.