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Welcome to Womble Carlyle's Capitol Connection e-newsletter, a weekly look at politics on Capitol Hill created by our Federal and State Government Affairs group for our Members and select clients they wish to send it to.

In this edition:

- Presidential Transition Update
- Election Musical Chairs
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PRESIDENTIAL TRANSITION UPDATE

President-elect Obama continued to announce major appointments to his administration including former Congressman and Clinton Chief of Staff Leon Panetta as head of the CIA; retired Admiral Dennis Blair as Director of National Intelligence; current Rep. Hilda Solis (CA) to be Secretary of Labor; former Dallas Mayor Ron Kirk to be United States Trade Representative (replacing the earlier choice of Rep. Xavier Becerra who decided to remain in the House); Harvard Law School Dean Elena Kagan as Solicitor General; veteran regulator Mary Schapiro as SEC Chairman, former Treasury official Gary Gensler to head the CFTC; and Karen Gordon Mills, a private equity investment adviser, to head the Small Business Administration. Cass Sunstein, reportedly a close Obama friend and one of the nation's top constitutional lawyers, will be named as the head of the Office of Information and Regulatory Affairs. CNN Health Reporter Sanjay Gupta is also under consideration to be the new U.S. Surgeon General. In related news, the Federal Election Commission elected Democrat Steven T. Walther as its new Chairman replacing Republican Donald F. McGahn II.

ELECTION MUSICAL CHAIRS

Minnesota – The Senate election in Minnesota is still undecided with incumbent Norm Coleman challenging the state canvassing board's decision to award victory to challenger Al Franken by 225 votes.

Illinois – The controversy surrounding embattled Illinois Gov. Blagojevich's replacement for President-elect Obama's Senate seat – Roland Burris – is nearing an end with the Senate Democrat Leadership announcing that it intends to seat Burris on Thursday.

On the non-election front, Denver's public schools superintendent Michael Bennett will be appointed to replace Sen. Ken Salazar (D-CO), once Salazar is confirmed as the new Sec. of Interior. Meanwhile, the Governor of New York is still deciding on a replacement to fill Hillary Clinton's Senate seat from a list of interested candidates that includes Carolyn Kennedy, N.Y. Attorney General Andrew Cuomo and others.

In addition, Senators Bond (R-MO) and Voinovich (R-OH) both announced that they would not run for reelection for a total of four Republican Senators including Brownback (R-KS) and Martinez (R-FL) who have announced they will not run again in the 2010 election cycle. Meanwhile GOP Senator Kay Bailey Hutchinson, Ranking Member on the Commerce Committee, continues to explore a run for Texas Governor in 2010.

111th CONGRESS – PROCESS

Impact of Election Uncertainty on Congressional Processes – While the court case in Minnesota had been holding up the determination of committee ratios in the Senate, it was announced today that the Democrat Majority will enjoy a three seat advantage on most committees – with a four seat advantage on Appropriations and Armed Services. Funding issues dependent on the committee ratios were also settled. On the House side, which has most of its elections settled with the exception of Reps. Rahm Emanuel's (Obama's Chief of Staff) and Hilda Solis' (Labor Sec.) seats, the Republican Minority is criticizing the adoption of new House rules that eliminated the limits on Committee Chairmen serving more than 6 years; eliminated minority rights to offer motions to recommit, and eliminated the so-called Medicare trigger which required the President to submit a plan to contain Medicare costs if more than 45% of Medicare costs come from general taxes in addition to funding from the Medicare payroll tax at least 2 years in a row.

A significant change occurred at the subcommittee level in the House Energy and Commerce Committee with Rep. Markey and Rep. Boucher swapping respective posts -- Markey taking over the Energy and Air Quality Subcommittee and Rep. Boucher taking Telecommunications and the Internet. Markey is expected to address climate change on the subcommittee more aggressively compared to Boucher who represents a coal producing district. Boucher in turn is expected to strengthen "fair use" provisions opposed to the recording industries. Rep. Gene Green stepped down as Chairman of the Committee on Standards of Official Conduct.

111th CONGRESS – SCHEDULE

Last Week – During the first week of the 111th Congress, in addition to swearing in members and passing rules changes and other organizational matters, the Senate in a rare Sunday session voted 66-12 to cut off debate and vote to proceed to an omnibus lands bill (S. 22) held up in the last Congress by Sen. Coburn and others for various reasons. The House in turn passed (247-171) the Lilly Ledbetter (HR 11) and (256-163) the Paycheck Fairness (HR 12) bills. The first reverses a Supreme Court decision limiting the time a claimant has to file pay discrimination claims while the Paycheck Fairness Act would allow claimants to sue for punitive as well as compensatory damages; puts the burden on employers to show any pay inequities are based on job performance factors; and prohibits firms from retaliating against employees who share salary information. Both bills stalled in the Senate last Congress without enough votes to invoke cloture (i.e. cut off debate and vote on final passage.).

This Week – The Senate will complete post-cloture debate on proceeding to the omnibus lands bill. Sen. Coburn promised to continue to delay the bill using all possible procedural opportunities which could take most of this week to exhaust. Following that bill, the Senate is expected to then take up the Lilly Ledbetter and Paycheck Fairness bills as well as debate Executive Nominations if they become available. The Senate could also move to items on tap to be considered by the House this week including release of the remaining TARP funds, SCHIP, a new Stimulus bill, a new Housing bill, and the so-called Card Check legislation discussed below. Senate Committees are holding numerous nomination hearings this week.

111th ISSUES

Stimulus Bill – While initially expected to be the first bill that the President-elect would sign in light of President's Bush's refusal to support a second such bill in the last Congress, the realities of the legislative process together with great interest by both Democrat and Republican tax writers and authorizers in Congress to have a say via hearings and mark-ups on the contents of the bill that will spend from \$750 billion to over \$1.2 trillion over 2 years – the largest spending bill in history has forced both the transition team and the Congressional leadership to acknowledge that the bill could not get out of Congress before mid to late February. Legislation to extend and expand SCHIP is now the most likely candidate to be the first bill signed by the new President although increased costs for this bill could prove challenging. The outline of the stimulus from the Transition Team indicates it will be split roughly 40% for tax cuts and 60% for spending that are free of any "earmarks." Funding issues in the bill are further complicated by CBO estimates that the FY2009 budget deficit will exceed \$1.2 trillion compared to the then historic high of \$455 billion for FY 2008. Provisions included in the President-elect's stimulus plan include:

Spending:

- **Green Recovery/Renewable Energy** – Modernize more than 75% of federal buildings and improve the energy efficiency of 2 million American homes in order to save energy and create jobs building and installing energy efficient technology in every sector of the economy.
- **Health IT** – Subsidies for healthcare providers to computerize all of America's health records over the next 5 years; there is some debate as to whether private as well as public entities, such as individual doctors' offices, will be eligible for such funding.
- **Education** – Construct and equip tens of thousands of public schools, community colleges and public universities with 21st Century classrooms, computers, labs, and libraries and make them energy efficient; and train teachers to use the technology. In addition, public school groups want \$20 billion for repair and maintenance and other grants to school districts to close budget shortfalls to avoid staff cuts as well as up to \$3 billion to pay for No Child Left Behind and IDEA

activities in the schools; education groups want to increase spending on college by boosting Pell Grants from \$4,700 to \$7,000 per student; college administrators want \$45 billion to renovate college facilities; Head Start advocates are asking for \$3 billion in operating expense and \$1.3 billion in repairs and upgrades to Head Start facilities.

- **Infrastructure Projects** – Funding to rehabilitate and repair bridges, roads, schools, water systems, and other infrastructure projects; there is already a struggle defining eligible projects determining which funding distribution formulas (such as highway formula) that will be used depending on the impact on particular industries and regions of the country; House Transportation and Infrastructure Committee Chair Oberstar has suggested \$85 billion in infrastructure spending with \$30 billion for highways, \$12 billion for bridges, \$12 billion for transit (\$1.5 billion for Amtrak, \$2 billion for states to pay increased fuels costs and purchase fuel efficient vehicles; \$2.5 billion for the costs of “new” transit projects), \$5.3 billion for airports improvement, runway resurfacing and extension, etc. to be funded out of Aviation Trust Fund instead of Stimulus funds; \$12 billion for environmental infrastructure (including clean water projects); an additional \$7 billion for Corp of Engineers dam and port projects; \$9.7 billion for federal building repair and construction; \$270 million for Smithsonian projects; \$20 million for the U.S. Capitol; \$480 million for the Coast Guard bridge alteration program, and \$400 million for the Economic Development Administration; House Appropriations Defense Subcommittee Chairman Murtha proposes another \$10 billion be included for domestic military construction; the nation’s governors want \$136 billion in total infrastructure spending; the Conference of Mayors asked for \$96 billion in projects; bicycle and outdoor activists want up to \$2 billion for bike lanes, trails, and walking paths; and public ports want \$6.7 billion for harbor maintenance.
- **Build National “Smart” Electricity Grid** – To distribute electricity efficiently.
- **Broadband Deployment** – Expand broadband access across America including rural areas and disadvantaged areas; hard wire industry advocates want the lion’s share for deployment of fiber-optic and other hard line technologies.
- **Research and Development Spending** – Expand government spending on science, research, and technology; competition is among stakeholders to direct such spending to particular fields such as medicine, transportation, energy, environment, biology, etc.
- **Federal Assistance to State and Local Governments** – To help them avoid budget cuts in fire, police, education and health care. Republicans have demanded that such aid take the form of loans to state/local governments instead of federal grants; Sen. Leahy wants to expand COPS program funding by around \$500 million; Rep. Frank wants to include a program that would help cities buy foreclosed properties.
- **Additional Spending Items** – Items that have been advocated by various members of Congress or outside industry/public interest groups include:
 - **Medicaid Subsidies for States** – \$20-80 billion to avoid state Medicaid cuts and make the unemployed eligible for the Medicaid program.
 - **COBRA Subsidies** – To help recently unemployed keep their former company health insurance longer.
 - **Unemployment Insurance Expansion/TAA** – Sen. Stabenow has said that in addition to unemployment insurance benefits being extended and expanded in the bill, Trade Adjustment Assistance (TAA) benefits will also be extended for displaced workers.
 - **Food Stamps** – Anti-hunger groups want \$24 billion to expand and boost such benefits; advocates also want a \$450 million increase in the WIC program and \$250 million to computerize systems and hire more staff.
 - **Avionics** – \$3 billion to fund aircraft equipment to fund “NextGen” transition from radar based to GPS based air traffic control system.
 - **Ethanol Industry** – Due to falling fuel prices and the national credit crunch they want \$1 billion for immediate operating expense to avoid layoffs and a \$50 billion federal loan guarantee program to build new conversion facilities and pipelines.

Tax Elements:

- **Tax Credit for Workers/Families** – \$500 single, \$1,000 married tax credit retroactive to Jan. 1, 2009 provided thru changes in withholding to avoid cost/delay in sending rebate checks; costs \$188-\$200 billion.
- **Allow Businesses 5-Year Loss Carry Back** – Versus current 2-year carry back allowing businesses immediate tax refunds from prior years, 2-year cost is \$20-\$25 billion; some critics want to except out companies that profited from the housing bubble. This provision has strong appeal for Republicans but is viewed much less favorably by many Democrats who want it removed.
- **Bonus/Accelerated Depreciation** – would accelerate business depreciation for acquiring new assets; aviation industry wants bonus for aircraft purchases extended to 2011 to spur purchases of aircraft.
- **Tax Credits to Hire New Workers** – Some question the ability to identify a new worker vs. a laid off worker.
- **Increased Small Business Section 179 Expensing**
- **Green Recovery/Renewable Energy** – Double existing tax credits/deductions in order to double the production of alternative energy in the next 3 years; cost \$20-\$25 billion.
- **Tax Related Assistance to States** – \$50 billion cost; Rep. Neal also wants to lift cap on tax-exempt private activity bonds used by states/cities to raise money for projects.
- **2009 Omnibus Appropriations** – Passing the remaining FY2009 Appropriations bills not passed in the last Congress. Those bills contain more than \$400 billion in spending that mirrors the spending proposed in the Stimulus such as transportation, energy, scientific research. Other than the Defense, Vet Affairs, and Homeland Security departments, the other federal agencies and departments are being funded at FY2008 levels under a Continuing Resolution (CR) which expires

March 6. Congress will have to pass legislation before March 6th to keep those parts of the government operating past that date. Republican leaders have suggested this bill in lieu of a stimulus bill.

OTHER NEAR-TERM AGENDA ISSUES FOR THE 111th CONGRESS

CHIP (formerly SCHIP) – House is expected to take its bill up this week which again is expected to be the first bill signed by President Obama after he is inaugurated Jan. 20. Last Congress, Bush twice vetoed a \$35 billion expansion of the State Children's Health Insurance Program in addition to the 5-year \$25 billion cost of extending the program at the current services level-- to extend the program to families making 300-400% instead of the current 100-200% of poverty. The additional funding was paid for with a 61 cent increase in the federal tax on cigarettes (to a \$1 per pack.) New CBO scoring added \$14 billion to the cost of expanding the program since last year prompting the bill's proponents to consider a 4.5 year expansion/extension instead of the full 5 years.

TARP, Part II – When the \$700 billion Trouble Asset Relief Program was passed in October 2008, Congress was given the opportunity to “disapprove” the second \$350 billion for the program when and if the President asked for it. Bush had been expected recently to leave it to President Obama to ask for the additional TARP funding, but announced Monday that he had asked Congress for the funding after President-elect Obama requested that he do so. The Senate might vote first on the disapproval resolution as early as this Thursday with the bill not open to filibuster since only 10 hours of debate are permitted.

Former Treasury Secretary Lawrence Summers, Obama's pick to head the Council of Economic Advisers, outlined five changes to TARP that Obama intends to pursue: launching “a sweeping effort to address the foreclosure crisis” by reducing mortgage payments for troubled homeowners and changing bankruptcy laws; easing credit and lending for small businesses, consumers and municipalities; strengthening program oversight and quickly overhauling financial industry regulations; limiting executive compensation at firms that receive government funds, banning most dividend payments and limiting stock buybacks and acquisitions of financially healthy companies; and replacing government funds with private investments as soon as possible.

Rep. Barney Frank introduced TARP Reform legislation (HR 384) along the same lines last Friday. The bill requires that Treasury direct funds to smaller local institutions; allows participants to withdraw from the program after repaying TARP funds; prohibits the payment of incentives to executives of firms acquired by another institution when TARP funds are involved; requires compensation based on inaccurate financial statements be returned; prohibits bonuses to the top 25 employees of auto industry TARP recipients; mandates that \$40 to \$100 billion of the \$350 billion for TARP II be used for foreclosure relief; provides a safe harbor for loan servicers from lawsuits if they modify loans to mitigate foreclosures; creates an additional Congressional oversight panel to report to Congress on Treasury's foreclosure mitigation efforts; requires Treasury's foreclosure mitigation program to include some combination of programs to guarantee loan modifications, lower the cost of Hope for Homeowners loans, loan program to pay down second mortgages, assist loan servicers in implementing loan modifications; or a loan purchase program to modify or refinance mortgages. The bill also provides explicit authority for the TARP program to assist automakers, creates financial facilities to purchase asset-backed securities and increase availability of consumer loans; and provides support for commercial real estate loans, mortgage backed securities and issuers of municipal bonds.

Industry Support for Bankruptcy “Cramdown” Bill – On a related note, Sens. Chris Dodd and Charles Schumer reached agreement last week with Citigroup and the National Assn. of Homebuilders to gain their support for a bill allowing federal bankruptcy judges to modify the terms of home mortgages during bankruptcy proceedings.

Digital TV Transition – President-elect Obama announced his support for a delay in the Feb. 17, 2009 date for the nation's TV stations to transition to digital instead of analog broadcasts after the NTIA announced that federal funding for the DTV Coupon transition program was running out with more than a month to go before the transition. More than 1 million people are already on, and up to 4 million more are expected to join, the waiting list for the coupons which they can redeem for up to \$40 off the price of a converter that will translate over-the-air digital broadcasts into an analog signal that will work with their analog TV sets. While Obama did not propose a new date, Congress, in addition to a new date, is also considering additional funding on top of the \$1.3 billion already allocated for the program as well as legislative changes to allow the NTIA to spend money from coupons that have not been redeemed in order to issue new ones.

2009 Iraq/Afghanistan Supplemental Appropriations – Defense Sec. Gates asked for \$70 billion in Supplemental funding for the wars this year, but House Appropriations Defense Subcommittee Chair Murtha is looking for \$16-\$18 billion on top – including a \$500 monthly salary bonus for soldiers held past their deployment commitments – which would bring total spending on the war in FY2009 to \$150 billion.

“Card Check” Bill – This bill would eliminate the requirement for a secret ballot election by workers before a union can be organized at a workplace – elections that unions contend are easily manipulated by employers. Timing for the bill is unclear since it has become a litmus test for Republicans as to the willingness of Democrats to work across the aisle to address their concerns.

OTHER ISSUES ON THE AGENDA FOR THE 111th CONGRESS

Broad-Based Health Care Reform; Tax Reform and Middle Class Tax bill; SEC/Financial Sector Regulatory Restructuring bill; Immigration Reform; Family and Medical Leave Act Expansion; New Housing/Home Foreclosure Assistance bill; Energy Reform bill; Guantanamo Bay Prison Closure; Torture Ban; Trade Adjustment Assistance Extension and Expansion; Patent Office Reform and Overhaul; Music Royalty Reform (eliminating AM/FM royalty exemptions); Endangered Species Act Reform; No Child Left Behind Education Act Reform; Early Childhood and After School Education Reform; Elimination of Anti-Trust Exemption for Railroads; Medical Device and Prescription Drug Labeling Non-Preemption Acts (reversing Supreme Court decisions opposed by trial lawyers ruling that federal medical device and drug labeling laws preempt state liability laws); an increase in the Federal Debt Ceiling.

USEFUL LINKS FOR THE WEEK

- [Obama Presidential Transition](#)
- [Official House Schedule for 111th Congress, 2009](#)
- [Official Senate Schedule for the 111th Congress, 2009](#)
- [Senate Committee Chairs - 111th](#)
- [House Committee Chairmen/Ranking Members - 111th](#)
- [New House Committee Members - 111th](#)
- [Up to the Minute Information on the Obama Transition](#)
- [Information on the How, Where, and How Much Related to Inaugural Balls in January](#)

If you would like additional information on any of these items or have any comments on how we can improve this product for you, please contact either Mark Harkins at mharkins@wcsr.com, or John Mashburn at jmashburn@wcsr.com.

Federal and State Government Affairs Team

Womble Carlyle is an experienced and effective government affairs advocate in Washington, as well as North Carolina and Georgia. Our Government Affairs group includes members from both major political parties who previously held the following positions: four-term North Carolina Governor; former Maryland Governor; Chief Justice of the North Carolina Supreme Court; General Counsel and Deputy General Counsel of the FEC; four-term North Carolina State Senator; Chief of Staff to the Co-Speaker of the N.C. House of Representatives; and two Chiefs of Staff to United States Senators.

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